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ELECTION COMMISSION, INDIA

NOTIFICATIONS

New Delhi, the 19th March 1953

S.R.O. 587.—WHEREAS the election of Shri S. Khader Shariff of Arcot, Walaja Taluk, North Arcot District, as a member of the Legislative Assembly of Madras, from the Ranipet constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Munuswami Gounder, Agriculturist of Village and Post Office Kadapperi, Walaja Taluk, North Arcot District, Madras State;

AND WHEREAS the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order to the Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, VELLORE

PRESENT:

Sri M. Anantanarayanan, I.C.S.—Chairman.

Sri P. Ramakrishnan, I.C.S.—Judicial Member.

Sri B. V. Viswanatha Aiyar, M.A., B.L.—Advocate Member.

Saturday, the twenty-eighth day of February, one thousand nine hundred and fifty-three.

ELECTION PETITION No. 84 OF 1952

Munisami Goundar—Petitioner.

Versus

1. S. Khader Sheriff.
2. R. A. Suban Sahib.
3. S. R. Margabandhu Sarma.
4. Rangasami Naidu.
5. C. A. Varadarajan.
6. Rangaswami Chettier.
7. Munia Pillai.

8. V. J. Rajavelu Mudaliar.
9. A. Balasundara Nayagar.
10. T. Ramaswami Mudaliar—*Respondents*.

This is an Election Petition filed on behalf of the petitioner under Sections 80 and 81 of the Central Act, XLIII of 1951 against one S. Khader Sheriff, and 9 others to declare that the election of the first respondent to the Madras Legislative Assembly from the Ranipet Constituency is void and to declare that the petitioner has been duly elected in his place or in the alternative to declare that the election is void and to order fresh election and to recover costs of this petition from the first respondent.

This Election Petition coming on for hearing before the Election Tribunal on the 28th November, 13th December, 10th and 29th January, 6th, 13th, 14th and 18th days of February, 1953, in the presence of Sri M. A. Rajagopala Aiyar, Advocate, for the petitioner, Sri D. Krishnaswami Aiyar, Advocate, for the first respondent, of P. S. Sundaresa Sastriar, Advocate, for the 3rd respondent reporting no objection, of Sri V. Nageswara Aiyar, Pleader, for the 8th respondent, and the rest of the respondents 2, 4 to 7, 9 and 10 being absent *ex-parte*, and having stood over till this day for consideration the Tribunal delivered the following:

JUDGMENT

The petitioner, Sri Munisami Goundar, seeks to set aside the Election of the first respondent, Sri S. Khader Sheriff, to the Madras Legislative Assembly from the Ranipet Constituency in the last General Elections. Respondents 2 to 10 are the other duly nominated candidates at the said election. The following are the main grounds upon which the petitioner seeks the relief:

- (i) The 1st respondent was disqualified from standing for election by virtue of Section 7(d) of the Representation of the People Act, 1951 as he was a permit-holder for the plying of buses and, as such, interested in a contract to carry mails from Kalavai to Arcot.
- (ii) The election was not a free election, because of certain corrupt practices of bribery extensively resorted to by the first respondent, and his workers with his connivance.
- (iii) Even Government officials of the State like the Tahsildar and Village Headman took sides, and canvassed votes for the first respondent with his consent.
- (iv) Certain irregularities occurred on the polling day, such as the late opening of the Ranipet polling station and closure of the station at Valluvambakkam. Further *Purdanishin* women voters were wrongfully confined in front of the Ranipet Polling Station, and other women voters were thereby scared away from voting. Again, the first respondent, contrary to the provisions of the Act, procured *jutkas*, *bandies* and motor vehicles for the conveyance of electors to and from the polling station. A printed handbill was circulated at the time of the election, which was issued with the connivance and support of the first respondent, and it was a glaring instance of the improper canvassing of votes. There was a mistake on the part of the Returning Officer in the matter of allotting symbols, and a large number of Parliamentary ballot papers were found mixed up with Assembly ballot papers in the Assembly boxes.
- (v) The first respondent furnished an incorrect return with regard to election expenses, and had actually spent a much larger sum than what was permissible under the law, and what he had shown in his return. In particular, reference is made to the non-disclosure by the first respondent of the sum of Rs. 500 paid to the Tamil Nad Congress Committee as application money for obtaining the Congress Ticket and for propaganda work, and the sum of Rs. 500 paid by him to the North Arcot District Congress Committee for propaganda work.

2. The Annexure to the petition furnishes several further particulars of alleged illegal and corrupt practices. The first respondent promised to renovate the *Mandapam* of the Pidari Amman Koil at Kathiwadi at a cost of Rs. 500 in order to induce the villagers of this village to vote in his favour. He similarly paid a sum of Rs. 235 to the Village Munsif of Arungunram, for the construction of a *Navagraha* temple in the said village, and paid sums of money to certain persons of Vanapadi village for distribution to voters. A sum of Rs. 6,000 was paid

by the first respondent to the President of the *Millath* of Melvisharam in order to induce the preponderating Muslim voters of that area to cast their votes in his favour. The first respondent did not include in the return of election expenses, the expenses of his offices rented in certain places, and the expenses of processions organised by him in connection with this election. Further, the first respondent's Advocate, Sri D. Krishnaswami Iyer, appeared for him at the time of the scrutiny of nomination papers, and was paid fees, not included in the return of Election Expenses. The petitioner hence prays that the Election of the first respondent should be declared void, and that the petitioner should be declared duly elected in his place, or (in the alternative) that a fresh election should be ordered.

3. It is sufficient to set forth, very briefly, the denials in the counter-statement of the first respondent. The agreement with the Postal authorities referred to in the petition, for the purpose of the alleged disqualification under Section 7(d), was with the Indian Postal department and the Central Government, and therefore not a disqualification for election to the State Assembly. The allegations regarding the several acts of bribery and corrupt practices are categorically denied. Similarly, the allegations regarding the employment of vehicles for transport of voters, and the colourable gifts to the Kathiwadi temple, the Melvisharam *Millath* etc., are refuted. No fee was paid to Mr. D. Krishnaswami Ayyar, who appeared for the first respondent at the time of the scrutiny. But the first respondent admits that a sum of Rs. 500 was paid to the Tamil Nad Congress Committee, though this was for promotion of the political views of that institution, and not for propaganda. The payment of Rs. 500 to the North Arcot District Congress Committee is also admitted, and it is affirmed that these were not expenses incurred with reference to the conduct of the election, which had to be included in the return. The first respondent denies the allegation that he spent a lakh of rupees for the election, or sums in excess of those exhibited in his return. No expenses were incurred for the renting of office premises.

4. Respondents 3, 4, 6, and 8 filed counter statements substantially supporting the petitioner.

5. The following issues were framed:

- (1) Whether the first respondent is disqualified under Section 7(d) of Act XLIII of 1951 by reason of his having entered into any alleged contract with the Madras Government relating to the carriage of Mails, as set forth in paragraph 7 of the petition?
- (2) Whether the election has not been a free and impartial election by reason that the corrupt practices have been resorted to by the first respondent and his workers with his connivance during the said election as detailed in the list of corrupt and illegal practices filed by the petitioner?
- (3) Whether irregularities alleged in paragraphs 9 and 10 of the petition are true and whether, if they are true, they materially affected the result of the election, and the election is, therefore, liable to be set aside?
- (4) Whether the return of Election expenses furnished by the first respondent to the Election Commissioner is incorrect and false, and whether he has spent much larger sum than what is allowed under Law?

Whether the Election is liable to be set aside on this account, and this Tribunal has power to go into this question?

- (5) To what relief is the petitioner entitled?

Additional Issues.—(1) Whether the Election Petition was presented in time, and whether, if it was not, the Election Commission had no jurisdiction to condone the delay in this case?

Whether even if the Commission had jurisdiction, the order of condonation is void for reasons adduced by the first respondent?

- (1-a) Whether this Tribunal has no power to question the act of condonation by the Election Commission?

6. **Issue 1.**—Exhibit B-1 is the registration copy of the agreement entered into by the first respondent with the Government of India in respect of carriage of Mails. It is clear from the document that the contract was with the President of the Indian Union, and there is no provision in this contract indicating or probalising any interest possessed by the first respondent in a contract with the State Government. The words 'appropriate Government' appearing in

Section 7(d) have been defined in Section 9(1) of the Act, and, in this case, the reference is to the State Government. As the contract was in form and substance one with the Central Government, we are of opinion that no disqualification attaches to the first respondent under Section 7(d) of the Act. Issue 1 is therefore found in his favour.

7. *Additional Issues 1 and 1-a.*—At a very early stage, the first respondent filed an application I.A. 346 of 1952, and therein contended that the Election Petition was out of time as there was a delay of one day in the presentation of the petition, that the condonation of the delay by the Election Commission was not proper or valid, and that the petition should be rejected as being time-barred. We decided that the petition was not barred by limitation, and that the condonation by the Election Commission was perfectly valid. We adopt the order passed on that application as our decision on this portion of the case, viz.,

“(i) The respondent in the Election Petition has raised an objection to the maintainability of the petition for the reason that it was presented out of time and that the order of the Election Commissioner condoning the delay is invalid. Petitioner has thereupon filed Interlocutory Application No. 346 of 1952 and has sought therein to have the delay, if any, excused. The facts bearing on this point are not in dispute.

“(ii) Under Rule 119 of the Rules framed under the Representation of the People Act, an Election Petition must be presented under Section 81 at any time after the date of publication of the notice concerning the return of Election expenses in the Official Gazette, as envisaged by Rule 113, and not later than fourteen days from such date. The date of publication in the present case was the 18th of March, 1952, and the presentation of this petition had hence to be made on or before 1st April, 1952. Actually, this petition was despatched by registered post on 31st March, 1952, and was delivered to the Election Commission on 2nd April 1952. If the date of the delivery to the Commission is to be the material date for the purpose of a presentation under Section 81(2)(b) of the Act, there can be no doubt that a delay of one day did, in fact, occur. The Election Commission took cognizance of the circumstances under which this delay occurred, and condoned the delay acting *suo motu*, as would be clear from the letter of the Secretary to this Tribunal, dated 6th December, 1952 (Exhibit A-1). This power must undoubtedly have been exercised by the Commission with reference to the proviso to Section 85 of the Act, which alone invests the Commission with the power to condone such delays. The questions arising for determination before us may be set forth as follows: (i) Upon a proper interpretation of Section 81(2)(b) of the Act, was there a delay, or was the presentation complete when the petition was forwarded by registered post on 31st March 1952, within the time fixed? (ii) Assuming, on the contrary, that a delay of one day really occurred, did the Election Commission act properly and within its powers in condoning the delay, though the petitioner himself did not apply to the Commission for such condonation, either orally or in writing? (iii) Has the Tribunal power to go into the question whether the Commission acted properly in condoning the delay, and to reverse or modify any such decision, within the scope of Section 90(4) of the Act? (iv) Independently of these questions, has this Tribunal the power to condone the delay in the presentation of such a petition, and should such a power be exercised in favour of the petitioner in the present case?

(iii) “The interpretation of Section 81(2)(b) is the first point which concerns us. It provides as follows:—“An election petition shall be deemed to have been presented to the Election Commission—when it is sent by registered post and is delivered to the Secretary to the Commission or the Officer so appointed”. The decision of the Election Tribunal Madras in *Prakasam Versus Krishna Rao* (Election Petition No. 144 of 1952) which has been placed before us is to the effect that the petition should be deemed to have been presented to the Election Commission on the date on which it is sent by registered post. Counsel for petitioner has sought to support this conclusion by certain arguments which he has subdivided as grammatical, logical or rational and artistic, this last branch of the argument again relating to harmonious construction. We have given our careful consideration both to the order of the Election Tribunal, Madras, referred

to above, and to arguments of learned Counsel, but we are constrained to hold that the only proper interpretation of Section 81(2)(b) should be that the presentation is complete when the petition is sent by registered post and is delivered "to the Secretary to the Commission or the Officer so appointed". We may immediately state what appears to us to be the strongest ground for such a view. Upon the alternative interpretation, the words "and is delivered to the Secretary to the Commission or the Officer so appointed", in the context of defining this mode of presentation, would be meaningless surplusage, and even undesirably misleading. The word "and" has generally been construed in a conjunctive and cumulative sense. (See Stroud's Judicial Dictionary Volume I page 82). In the case decided by the Madras Tribunal cited above it was pointed out that the emphasis was not on the date of receipt but on the sending by registered post. We find it difficult to follow this reasoning. Taking into account the fact that Section 81 did not prescribe a period of limitation but merely prescribed the procedure for service, we are of the view that the Section while permitting the despatch of the petition by registered post also provided that the delivery should be effected with the Election Commission. Counsel for the petitioner sought to argue that Section 81(2)(b) refers to two stages of the process of presentation, that the first stage, was complete as soon as the petition was sent by registered post, and that the second stage, which relates to the powers and obligations of the Election Commission in respect of such a petition, was complete only when the delivery takes place. This would really be inserting two independent periods of limitation for the filing of an Election Petition. We can see no conceivable ground upon which a far-fetched interpretation of this character could be sustained. As was pointed out by us, it would necessarily involve the inference that the rights of the petitioner to prosecute his petition are at least unassailable and complete, the moment the despatch by registered post is effected. If, for instance, such a petition never reaches the Election Commission through some accident, or is destroyed *en route*, could the petitioner prosecute it, nevertheless, by adducing secondary evidence regarding the contents of the petition said to have been despatched? It is perfectly true that the language adopted in clause (2)(b) is far from clear from the point of view of grammatical construction. Instead of the words "when it is sent by registered post and is delivered" etc., one might expect such language which would obviate all vagueness in construction, as "if it is sent by registered post, when it is delivered" etc. But in our view, the difficulty upon the aspect of grammar or construction is far less vital and significant than the considerations relating to the inclusion of the words "and is delivered to the Secretary to the Commission" which we have just discussed above. It is further argued that if the Legislature intended that delivery should be the *terminus a quo*, a separate Clause like (b) would be quite unnecessary. But we think that this overlooks the point that, in drafting this Section, a distinction was obviously sought to be made and maintained between delivery by the petitioner himself or his agent on the one hand and delivery effected through registered post on the other. Upon the logical or rational aspect, stressed by Sri Rajagopala Ayyar, Section 27 of the General Clauses Act has been referred to, but this is not of much importance, as the definition of "Service" in that clause relating to registered post, makes an explicit reservation "unless a different intention appears". Upon the reasoning set forth above, we are of the view that the presentation is complete only when the delivery to the Secretary to the Commission takes place. In this view, a delay of one day has undoubtedly occurred in the present case, and the other questions which were adumbrated previously arise for determination.

- (iv) Taking up the first question of our power to modify or reverse an order of the Election Commission condoning a delay by virtue of Section 90(4) of the Act, we merely desire to state that this Tribunal undoubtedly has power to dismiss an Election Petition "which does not comply with the provisions of Sections 81, 83, or 117", "Notwithstanding anything contained in Section 85" which would, ordinarily, take in the *Proviso* to the Section as well. In this view, and indirectly, it is no doubt true that the Tribunal has power, in a suitable case, to dismiss an Election Petition under Section 90(4), even

though the delay in presenting that petition had been condoned by the Commission. But we have no doubt that this would be proper only in a very exceptional case, where the Election Commission has acted in a grossly illegal manner or *ultra vires* of its powers. We have no doubt that the Legislature did not intend the Tribunal to act as a Court of Revision or Appeal over the Election Commission, in the exercise of the powers of the latter to condone delays in suitable cases. Sri D. Krishnaswami Ayyar for the respondent has strenuously contended (i) that the Election Commission erred in acting *suo motu*, in violation of the Proviso to Section 85 which contemplates an application or move by the petitioner himself and (ii) that the Election Commission erred in condoning the delay without issuing notice to the respondent and hearing him, violating the principle of Natural Justice embodied in the maxim '*audi alteram partem*'. We have carefully considered these arguments, and we cannot accept them as valid. It is no doubt true that, in this case, the Election Commission acted *suo motu*, taking cognizance of the relevant circumstances in which the delay on the part of this petitioner occurred. The Proviso to Section 85 does not, in our view, rule out such a course. It states that the person making the petition must satisfy the Election Commission that sufficient cause existed for his failure to present the petition in time. The commission may be so satisfied from the circumstances and facts of the individual case, and the Proviso nowhere requires that an application, oral or written, should be made to the Commission. In the instant case, there can be no doubt that abundant justification existed for the condonation of the delay. Leaving aside all other considerations, we have the significant fact that it is still a moot point whether, under the circumstances, a delay could be said to exist at all. The Election Tribunal, Madras, has accepted a different construction of Section 81(2)(b) placed before it, and it is perfectly conceivable that the petitioner and his learned Counsel were of the same view. It is significant to note that Section 90(4) while conferring a power on the Election Commission to condone the delay did not prescribe a procedure therefor. It will be difficult to extend the rules regarding notice and hearing of parties at the stage when the petition is received by the Election Commissioner, especially when the Legislature has thought fit not to provide for them. It would then certainly be administratively inconvenient, as the Commission would be concerned, not with arriving at a judicial decision after careful balance of opposed arguments, but with making headway with its business of admitting all valid petitions and sending them to Tribunals for trial. Counsel for the respondent relied on a decision of the Election Tribunal, Ajmer in Election Petition 298 of 1952 reported in *Gazette of India*, 17th November 1952. In that case however, there was no order of the Election Commissioner. All that appeared, was an endorsement by an Official authorised to receive the Election Petition. It was held therein that there was really no condonation of the delay. It is no doubt true, in a certain sense, that a valuable right accrues to the returned candidate when no Election Petition contesting the election is presented in time. Learned Counsel cites before us the Privy Council Decision in *Krishnaswami Panikondar v. Ramaswami Chettiar* (Indian Law Reports 41 Madras 412) for the view that a condonation of delay under Section 5 of the Limitation Act ought not to be made without hearing the opposite party, who has the valuable right of a decision in his favour, which would be final but for such a condonation. But even the Privy Council merely laid down that such an order "should be open to reconsideration at the instance of the party prejudicially affected". It would be manifestly unreasonable to hold that the order of condonation is bad, and must be set aside, notwithstanding its merits, merely because the Election Commission had not heard the respondent, and even though he could have urged nothing more than what has been urged before us. We are, therefore, of the view that, whatever view might be taken of our powers under Section 90(4) to interfere with an order of the Election Commission under the Proviso to Section 85, there is no necessity or justification whatever for interference with the order condoning the delay of a day in this particular case. It is not argued before us that the Election Commission has no such power, for the terms of the Proviso are clear and explicit. In the view we take of this matter it is not necessary for us to proceed into the question whether, independently, we have powers to condone a

delay of this kind, and whether such a power should be exercised in the present case. This question is answered in favour of the petitioner."

The additional issues are therefore answered in favour of the petitioner, and we hold that the petition is in time.

8. Issues 2 and 3.—We consider that it will be sufficient if we deal with these issues very briefly. The reason is that though the petition and the Annexure traverse multifarious allegations or corrupt practices and irregularities, there has been so little of an attempt to substantiate them by reliable testimony, that it would be a waste of time to proceed into the *minutiae* of the record. We may make two broad observations, at the outset. Firstly, allegations which are not substantiated by evidence are obviously worthless, even if they are rich in particulars, and sound plausible. Secondly, we cannot speculate upon the causes for the failure of the petitioner to produce evidence in support of his allegations, though he cited a large number of witnesses originally. We feel it our duty to state that not the slightest material has been placed before us for justifying an inference or impression that the first respondent, admittedly a man possessing wealth and local status, has been responsible, directly or indirectly, for the absence of testimony in proof of the allegations. We have, no doubt, the interested evidence of the petitioner (P.W. 1). We have, the equally interested testimony of the 1st respondent (R.W. 1), in which the several allegations are refuted, categorically and explicitly. Apart from this, we have the evidence of Adimoola Goundar (P.W. 3) relating to the gift of Rs. 235/- by the 1st respondent for the construction of a *Navagraha* temple at Arangunram, 3 days before the election. But the witness concedes that his knowledge is pure hearsay, and he admits that the first respondent said nothing on the occasion which he refers to. Ponnuswamy Goundar (P.W. 4) similarly speaks to a promise by one Dharmalinga Chettiar, on behalf of the first respondent, of a donation for the renovation of the *Mandapam* of the Pidari Amman Koil at Kathiwadi. But he concedes that he does not know the relationship between Dharmalinga Chettiar and the first respondent, that no further enquiries were made by him, and that there was no talk about any specific amount. Punniakotti Naicker (P.W. 5) speaks to the late opening of the Polling station at Sumaithangl village. But he is unable to say, from personal knowledge, if any of the voters assembled actually failed to vote, for that reason. As we have already observed in our order in E.P. No. 50 of 1952, the late opening of a Polling Station is, by itself, nothing more than a minor irregularity, and the main question in every such case would be whether persons actually failed to vote for that reason. Doraisami Naidu (P.W. 6) is a similar witness, but the sole relevant part of his evidence is that he saw, at 2 p.m. on the Polling day at Poondi station, several voters brought to the booth in the first respondent's private car. But he admits that he had no knowledge, personally, of the ownership of the car. Chockalinga Goundar (P.W. 7) speaks to disbursement of sums to voters at Edapperi on the polling day by the agent of the first respondent. But his admission is that this is hearsay, and that he did not personally witness the corrupt practice. Manivelu Goundar (P.W. 8) speaks to the gift of Rs. 235/- by the first respondent for the construction of a *Navagraha* temple at Arangunram, but his knowledge is based upon the testimony of Ali Goundar, the Village Munsif, who has not been examined. Apart from this, we have only Exhibits A-8, A-9 and A-10, Exhibit A-8 being an authenticated copy of a telegram sent by one of the candidates (Sri R. A. Subhan) to the Chief Secretary, complaining of alleged undue influence exercised on the voters by the Tahsildar, Wallaja on behalf of the first respondent, and Exhibit A-10 a report in a Tamil Newspaper (*Dhinathanthi*) dated 4th November 1951, to much the same effect. Sri Subhan, though a respondent in these proceedings, has not been examined before us, and, obviously, we can take no cognizance of Exhibit A-10. Under these circumstances, we have no hesitation in finding that not a single instance of alleged corrupt practice or alleged irregularity in the conduct of the election has been proved before us. Issues 2 and 3 are accordingly found in favour of the first respondent.

9. Issue 4.—The questions relating to this issue have given us great anxiety, as they involve a complicated point of fact and law, the decision of which has a vital bearing on the return of 'election expenses' by candidates. Before we proceed into the facts, we may set forth the legal implications of the alleged corrupt practice, and the alleged submission of an incorrect return of election expenses. We desire to be brief here, for these implications are not in dispute, and they flow directly from the relevant provisions of the Act. Section 76(1) of the Representation of the People Act, 1951 provides for the submission of the return of election expenses within the prescribed period. Section 77 provides for the maximum scale of such expenses, and this section has to be read with Rule 117 of the Representation of the People Rules, 1951, which in its turn, relates to the maxima

specified in Schedule V. It is not denied that the limit of Rs. 8000/- is prescribed in the case of an election to the State Assembly in the Madras State in a single member constituency. Section 100(2)(b) provides that the Tribunal shall declare the election of the returned candidate to be void, if any corrupt practice as described in Section 123 has been committed by a returned candidate. Section 123(7) provides that "The incurring or authorising by a candidate or his agent of expenditure, * * * in contravention of this Act or of any rule made thereunder", shall be deemed to be a major corrupt practice. Section 124(4) provides that "The making of any return of election expenses which is false in any material particular, or the making of a declaration verifying any such return," shall be deemed to be a minor corrupt practice. Finally, we might refer to Section 140 of the Act which provides that corrupt practices specified in Sections 123 and 124 shall entail disqualification for membership of the Legislature of a State. From the foregoing sections, it is clear that the Legislature prescribes a maximum limit in respect of election expenses, and also enjoins that a contravention of the limit, committed under whatever circumstances of good faith or mis-apprehension, vitiates the election itself. We may observe here that the rule appears to be less stringent in England than in India, from the research that we have been able to make. Under Section 64 of the English Representation of the People Act, 1949, knowledge has to be imputed to the candidate or agent, committing an illegal practice by exceeding the maxima. We have no doubt that the departure from the English law in our Act is deliberate, and that the Legislature has thought fit, in its wisdom, to render the exceeding of the maximum a major corrupt practice *per se*. We have, further, no doubt that this must be in pursuance of a salutary and fundamental principle of democracy, that the suffrage of the voters must be obtained on the worth of the candidates, on the merits of their programme, and not with the unfair aid of mere wealth. We must equally note that the expression 'election expenses' has nowhere been defined in the Act. Even in the corresponding English Act there is no definition. This, again, is not arbitrary or accidental, but based upon principle. The best illustration of this principle, if we may say so with respect, is to be found in the observations of Lord McLaren in the *Elgin Case* (5 O'M & H, page 1 at page 4).—

"It would have been very simple on the one hand to have used words which would have limited the scope of the section to expenses incurred subsequent to the dissolution of Parliament, or, in the case of a casual election, subsequent to the issue of the writ. One objection to such a limitation would be, as everyone must see, that it would have entirely defeated the object of the promoters of the section, because it would just have led to all the expenses being arranged before the issue of the writ, and perhaps paid before that time, in order to reap the benefit of an expenditure in excess of the maximum prescribed by the statute."

10. We may now proceed to review the facts of the first payment, with which alone we are concerned, for the moment. The case relating to the second payment is that it is no charity, but a colourable transaction, which has to be separately examined. The facts bearing upon the first payment are not in dispute, and any lingering doubts in this connection have been finally set at rest by the record itself and the explicit testimony of Sri N. E. Raghunathan (P.W. 2) the Secretary of the Tamil Nadu Congress Committee. Exhibit A-4 dated 12th September 1951, is an application by the first respondent to the Tamil Nadu Congress Committee, Madras declaring his intention to stand for election to the Ranipet Constituency at the ensuing elections, and seeking the Congress ticket. Column 4 of the printed form states that the applicant had paid a subscription of Rs. 100/- and a further deposit of Rs. 400/- by cheque, totalling in all Rs. 500/-, to the Election Committee of the Tamil Nadu Congress Committee. There is an Annexure to this application which states that the application money will not be refunded, in any event, but that the deposit of Rs. 400/- is liable to be refunded, if the applicant is not finally approved by the Committee. This payment of Rs. 500/- is vouched for by the receipt issued by the Tamil Nadu Congress Committee on the same day (Exhibit A-2). The amount is described as subscription and deposit for the election. Sri Raghunathan (P.W. 2) stated that no one could stand for being elected as a Congress Candidate for a constituency, unless this contribution is made along with the application. If the person is not selected, Rs. 400/- of the money is returned and Rs. 100/- appropriated. If the person is selected, the entire amount is appropriated. The Committee has, of course, the right to select even a person who does not make this deposit, but that is in a special case, where the deposit is waived. If the person making the deposit is selected, he is adopted as the Official Congress Candidate for the Constituency, and obtains the Congress ticket and symbol, as well as the moral support and prestige of the organisation. The first respondent states in his evidence that the

order of the Tamil Nadu Congress Committee approving him as a candidate was received about three days prior to the filing of the nominations, and about one and half months after the deposit was made. The very important question here is whether this deposit ought to have been exhibited in the return of election expenses, and whether the first respondent ought not to be taxed with the consequences of this omission.

11. There are here two related yet distinct matters for determination. The first is when an election might be said to commence, and the second is when a candidate might be said to be liable for incurring the expenses of election. It is obvious that an election may be impending, and there may be yet no candidate responsible for the incurring of election expenses. The matter has been put thus in Halsbury's Laws of England (Hailsham Edition) Volume 12 at Section 493,—

"The question when an election begins must be carefully distinguished from that as to when the conduct and management of an election may be said to begin."

In the present case, it is not in dispute that elections were impending at the time when the first respondent made his application (Exhibit A-4), and this is indisputably clear from the very preamble of the printed form viz., "I desire to contest the impending General Elections as a Congress candidate." As observed by Hawkins, J. in the Walsall Case (4 O'M. & H. 123 at 125),—

"I cannot think that the period of candidature or the period of agency is to be limited, either by the date of the issuing of the writ, or by the day of nomination."

Again, as pointed out in the Elgin and Nairn Case (5 O'M. & H. 12),—

"The election must not be in nubibus, but reasonably imminent."

This test was approved by Baron Pollock in the Lichfield case (5 O'M. & H. 27 at page 36). In view of the clear facts here, we do not think it is necessary to discuss the English cases further. We may take it as established and admitted, that the elections were impending when the application and payment were made. But it is seriously contended, mainly upon the authority of an English case which we shall examine in detail later, that the first respondent was not a candidate at the time he made this payment or deposit. The argument may be stated thus. A person does not necessarily become a candidate, when he forms the intention to become a candidate [per Keating, J. in *Malcolm v. Parry* (1875) (L.R. 10 C.P. page 168)]. Here, the bare facts are that the individual concerned applied to a political association for being accepted as the party candidate. On that date, there was no certainty that he would be chosen as the Congress candidate for this constituency, and the evidence is that 3 or 4 others had applied, and that the first respondent was not at all certain about his selection. Until the first respondent was so selected, he was not a candidate, but a person aspiring to be a candidate. The amount paid by him might be described as a "step-in-aid" of the candidature, which he had yet to obtain. But it cannot be reasonably described as an expense in furtherance of the election, or related to the conduct of the election. The authority relied upon is the *Borough of Maidstone Case* (5 O'M & H. 200), the facts of which will engage us presently. But the point here is, and it is a point of great nicety, when a candidature begins, and when a person commences responsibility for his expenses as such candidate.

12. The word 'candidate' is defined in the English Law (Representation of the People Act, 1949) in the following manner:—

"In relation to a parliamentary election, candidate means a person * * * who is nominated as a candidate at the election, or is declared by himself or by others to be a candidate, on or after the date of the issue of the writ for the election".

In this respect, the law in this country makes a significant departure, and that departure in our opinion again emphasises the application of a vital democratic principle, in the light of differing conditions. We may here note, briefly, a feature of the political practice in the United Kingdom, which repeatedly colours and influences the English cases viz., the fact that there a person is often adopted as a candidate by a political association, without any move on his part, until a particular stage when the adoption is formalised by his consent. In Wharton's Law Lexicon (14th Edition page 159) it is stated as follows:—

"Candidate is derived from the *toga candida* in which competitors at Rome were habited. It means a competitor, one who solicits or proposes himself for a place or office."

There is, again, a very helpful definition in Section 171-A of the Indian Penal Code in the Chapter dealing with Election Offences, as follows:—

“‘Candidate’ means a person who has been nominated as a candidate at any election and includes a person who, when an election is in contemplation, holds himself out as a prospective candidate thereat: provided that he is subsequently nominated as a candidate at such election.”

Above all, the expression has been defined in Section 79(b) of the Representation of the People Act, 1951, in the following terms:—

“‘Candidate’ means a person who has been, or claims to have been duly nominated as a candidate at an election, and any such person shall be deemed to have been a candidate as from the time when, with the election in prospect, he began to hold himself out as a prospective candidate”.

These terms are highly significant, and we would particularly emphasise the expression:

“When, with the election in prospect, he began to hold himself out as a prospective candidate”.

The observation of Grantham, J. in the *Borough of Maidstone Case* (5 O.M. & H. 200) to the effect that the word ‘prospective’ when applied to a candidate is mere surplusage, may be noted here. The Legislature in our country has not adopted this view, and it is clear that the essence of the definition is not some status conferred by a political association, nor due nomination subsequently, though such nomination is necessary for the full definition to apply, but the ‘holding out’ as a prospective candidate by the person concerned, in the context of an impending election. This is powerfully reminiscent of the dictum of Baron Pollock in the *Lichfield Case* (5 O.M. & H., 27—36—

“Every man must judge when he will throw himself into the arena; * * it is his own choice when he throws down the glove, and commences his candidature.” (See also observations of Packford J. in *East Dorset* 6 O.M. & H. 22 at page 51).

In brief, whatever metaphor be used, the candidature commences as soon as a man goes beyond a mere intention or any hesitant or ambiguous expression of it. As soon as a man makes his choice, declares unambiguously that he intends to stand for the election, and expresses this declaration through any overt act, which may well include an application to the relevant political association for the party ticket, he certainly becomes a ‘prospective candidate’. It is not justifiable to contend that he is not this, because the association has not finally chosen him, for the test should be applied from the point of view of the candidate. If the association does not choose him ultimately, and he is not nominated in consequence, he does not fulfil the earlier part of the definition, and his election expenses are not relevant. But if he is chosen, the hazard of the choice does not affect the vital fact that his candidature began the moment he began holding out, by an unambiguous declaration and application. It is nowhere expressed in the definition that he must hold out to the electorate directly as an approved candidate, and, indeed, such a definition would lead to great anomalies and complications. For that matter, it may be equally uncertain whether a person obtains a valid nomination at an election, and it is not seriously argued that his candidature depends on this. As observed by Dampier, J. in *Morris v. Burdett* (105 E.R. 362) the ordinary import of the word is—

“One who voluntarily proposes himself, or adopts the proposals of others.”

13. We may now proceed to consider the English case relied upon by learned Counsel for the first respondent, and the facts relating thereto. In the *Borough of Maidstone Case* (5 O.M. & H. 200) the Conservative Association adopted the respondent (Lord Castlereagh) as the Official candidate on the 27th of December 1905. Certain expenses had been incurred before that date, when he was prospectively a candidate, but when he was not adopted as the candidate. We have to carefully note that, in English law, a political association supporting a candidate is considered as the agent of the candidate, and the question therefore arose whether the expenses of a meeting incurred before the date of adoption (27th of December, 1905), ought to be included in the return of Election expenses, or not. In delivering Judgment, Justice Grantham made certain observations dissenting from the prior case-law and views of eminent Judges, and almost proceeding to the extreme position that no election expenses could be incurred before there is a nomination.

and the appointment of an agent. This view has been forcefully dissented from by Baron Pollock and Hawkins, JJ., in cases cited above, and it does not commend itself to us, nor is it supported by the weight of the best authorities. But the point we would like to emphasise is that, in the *Maidstone Case*, it was the Conservative Association which went about prospecting for a candidate, and incurred expenses for the political meeting, in accordance with political practice in the United Kingdom. Lord Castlereagh was not a candidate, present or prospective, prior to the crucial date (27th December, 1905), when his consent was obtained by the Association, and he was officially adopted as the candidate. The situation would indeed be different if, at the very commencement of the activities of the Conservative Association, Lord Castlereagh himself had made any unambiguous declaration, or had solicited the suffrage of the electors as a candidate. But there is nothing to support this in the record of facts, and the contrary would seem to be the case. We have to note that *Lawrence, J.* who delivered a concurring judgment, also differed from the extreme view adopted by his learned brother, Justice Grantham. In this context, we would like to refer to *Morris v. Burdett* (105 E.R. 362) as that case is illustrative of the political practice in the United Kingdom. The question specifically arose in that case whether a person could be fixed with liability in respect of election expenses, where he is selected as candidate without his knowledge or consent. Lord Ellenborough, C. J. observed that—

"a person cannot be, in that sense of the word, a candidate by the mere act of others, who propose him without his assent".

Again, in the *Yarmouth Case* (5 O'M. & H. 176) Justice Grantham held that a man is liable to incur expenses for the conduct and management of an election which is still in view, from the time he became the adopted candidate. That also indicates that the starting point for the candidature will be the adoption of a political party, where that is the current practice, but it is obvious that the situation would be widely different, where the individual concerned himself begins to hold himself out as a prospective candidate by means of a declaration and application, as in this case. In the *Lichfield Case* (O'M & H. 26) the expenses of a meeting at which the respondent's candidature was approved were held to be election expenses, because the respondent declared himself as seeking this approval, and the meeting was one to promote his election.

14. To hold the contrary would, in our view, lead to startling results, and frustrate the fundamental objects of the Act. As we have already affirmed, it would be anomalous to take cognizance of the activities of a political association in announcing a decision, upon applications made to it by individuals for approval as the Official candidate. Indeed, there is nothing in law rendering such an announcement imperative or necessary, at least at any stage prior to the assignment of symbols to the candidates as party representatives at the election. This interpretation would lead to the very startling conclusion that no election expenses could be incurred by a prospective candidate, prior to the announcement or adoption by the party organisation, which may even succeed the nomination itself, instead of preceding it. Further, the vital democratic principle of a rigid limitation of election expenses, which we have previously emphasised, could be frustrated by the deliberate plan of a political association in taking monies from candidates as subscription for the candidature, which might well be ten times the amount actually paid in the present case, and delaying the announcement of its seal of approval on the candidate, so that these amounts could be taken out of the ambit of the election expenses altogether. In the present case, the payment of Rs. 500 was expressly made as subscription for the first respondent's candidature. If his candidature began on the date when he made his application to Tamil Nadu Congress Committee and paid the money, it is an inescapable inference that the expense was incurred with reference to the conduct and management of the election, and should have been included in the return. It is true that a circular appears to have been issued by the Tamil Nadu Congress Committee, in which the advice was given to candidates that this subscription need not be included in the return of election expenses. We are of the opinion that this view is not correct, and Sri Raghunathan (P.W. 2) has frankly conceded that, to his knowledge, it is based neither upon opinion of qualified Counsel duly obtained, nor upon any authority of the Election Commission, or anything in the Election Manual. We have therefore no hesitation whatever. In the present case, in finding that the 1st respondent was a prospective candidate holding himself out as such, when he made the declaration and the application, and that this sum of Rs. 500 paid as subscription for his candidature ought, therefore, to have been included in the return of election expenses made by him.

15. We may next proceed to the sum of Rs. 500 paid by the 1st respondent to the North Arcot District Congress Committee on the 23rd September, 1951. Here

again, the plain facts are not in dispute, and they are established by the record, as well as by the frank evidence of the Secretary of the Committee, Sri Janakirama Mudaliar (C.W. 1). The case of the first respondent is that the Committee was then in need of funds, that it approached him with this request, and that he made the payment for the benefit of the Political association, as a donation (Nankodai). But the Secretary Sri Janakirama Mudaliar (C.W. 1) has made vital admissions which establish that this gift cannot be merely viewed in the light of an innocent charity, but is colourable. He states that "We knew that the first respondent had applied for nomination as a Congress candidate to the Tamil Nad Congress Committee, when we asked for this donation. The District Congress Committee participated in the propaganda for the Assembly Elections. * * * We met the expenses of such propaganda. * * * I cannot say now exactly the Rs. 500 given by the first respondent was spent and whether part of it was spent on propaganda tours or not". Even more significantly, he states that the applications for candidature were sent to the Tamil Nadu Congress Committee direct, but that its representatives consulted the members of the District Congress Committee and, normally, took into account their recommendations for the nomination on the party ticket. As we may well imagine, the view of these local representatives with reference to the candidature to a local constituency, were likely to be of great weight, and influence. It is in this context, and before he was certain that he would be nominated, that the first respondent paid this substantial sum as a donation to the District Congress Committee. We have no hesitation in holding that the dominant motive that he might thereby obtain the good will and recommendation of the members of this body as also a large body of voters must necessarily have influenced the first respondent, even though it might not have been the sole motive. Nor is this all. The Secretary of the Committee (C.W. 1) was, strangely enough, compelled to admit that this body had no proper accounts. He was, however, confronted with Exhibit A-7 (a signed copy of a statement of account) which shows that a sum of Rs. 4,424-10-0 had been expended by the Committee in connection with the elections, and that the funds for the expenditure were derived from a grant of Rs. 2,703-4-0 made by the Tamil Nadu Congress Committee and the contributions of the first respondent in a sum of Rs. 500, and another candidate in a sum of Rs. 250. It is quite unnecessary that we should proceed into the question how far, and to what extent, the first respondent was benefited as a result of the expenditure on elections incurred by the North Arcot Congress Committee. In a certain sense, such an enquiry is even precluded by the Explanation to Section 125, which provides that expenses incurred by an institution or an organisation for the furtherance of the prospects of the election of a candidate supported by such institution or organisation, shall not be deemed to be expenses incurred or authorised within the meaning of Section 125(1), amounting to an illegal practice. The true question for consideration is not this, but the nature of the payment made by the first respondent on the 23rd September, 1951, the motive underlying it, and the issue whether his explanation could be accepted, for a moment, that this was a sheer innocent act of charity, dictated no doubt by political sympathies, but quite disassociated from his candidature, or the impending election. The first respondent says that he has made contributions for *Gandhi Jayanthi*, it is not clear whether before or after this gift, but there is absolutely no proof of any such prior act of charity on his part. As the first respondent maintains a complete set of accounts, such proof should have been possible and easy. We may state that we are not on the ethics of this contribution at all, since it may not amount to an illegal act *per se*. But can it be reasonably contended, under the given circumstances, that it was not made for the furtherance of the candidature of the first respondent, and in relation to the conduct of the impending elections?

16. We think it is here sufficient to cite two English cases, both illustrative of the vital principles involved in interpreting highly suspicious gifts of this character. *Bowen J.*, stated in the *Wigan Case* (4 O.M. & H. page 1 at 14) as follows:—

"Charity at Election times ought to be kept by politicians in the background.

No doubt the distress was great in Wigan at this time, and there was probably many a fireless and breadless house throughout the town; but the persons who ought to have relieved the distress were not the politicians of Wigan; they ought to have stood aloof; they had another duty to discharge on that day, and they could not properly discharge both duties at the same time. In truth, I think, it will generally be found that the feeling which distributes relief to the poor at election time, though those who are the distributors may not be aware of it, is really not charity, but party feeling following in the steps of charity, wearing the dress of charity, and mimicking her gait."

It must be noticed that these weighty observations relate to the far wider case of gifts or charitable donations made to sections of the electorate, in the context of economic distress, merely amounting to 'nursing' the constituency. But even such acts of charity have been held colourable. In the present case, the subscription is to the funds of a political body, intimately concerned with the elections, prior to the Official approval of the candidature, the members of that body being in a position to recommend the candidature or influence the obtaining of it. Equally significantly, the actual monies were expended by this body in the conduct of the elections. The other case which we would refer to here in that of *Kingston-upon-Hull* (\$6. O'M. & H. 374) wherein *Ridley J.* observed as follows:

"Now assume for the moment that a man forms a design, which at the time is unobjectionable because no election is in prospect, for that is the point; yet if circumstances alter, and an election becomes imminent, he will go on with that design at his risk."

In other words, there is nothing objectionable, nothing even which necessitated the exhibition of this gift in the Return, if the charity had been occasioned in a different context. But the gift ought not to have been made in the peculiar circumstances, and we cannot possibly regard it as innocent, and not motivated by the desire to obtain the recommendations of the North Arcot District Congress Committee for candidature of the first respondent. We are, therefore, of the opinion that this should have been equally included in the return, and that the first respondent is guilty of this omission also.

16. The return of election expenses filed in this case (Exhibit B-4) shows that the first respondent has submitted a return for Rs. 7,063. If the two items of Rs. 500 each detailed above are added to the same, as they should be, the expenditure incurred exceeds the sum of Rs. 8,000, and this is indisputable. This is a major corrupt practice, within the meaning of Section 123(7) of the Act, and it vitiates the election of the returned candidate *per se*. On the further point whether the first respondent also guilty of the minor corrupt practice of making a false return, within the meaning of section 124(4), we see no reason to doubt his *bona fides* about this. He was apparently guided by the circular issued, and we desire to record that we do not find him culpable in this respect. But, as we have already affirmed under Section 123(7) the exceeding of the maximum prescribed by the statute involves consequences based upon vital principles, entirely irrespective of the *bona fides* of the concerned individual. In view of this corrupt practice, we have to declare that the election of the first respondent is void in terms of Section 100(2)(b) of the Representation of the People Act, 1951. We also record a finding, as a consequence under the Scheme of the Act, that the first respondent has committed a corrupt practice entailing his disqualification for the Legislature of the State, as specified in Section 140(1)(a) of the Act read with clause (2) of the same section. We may here also record, conveniently, that we do not think that the first respondent erred in not exhibiting in his return the value of the fees payable to his Counsel (*Sri D. Krishnaswami Ayyar*) who appeared for him at the time of the scrutiny of the nominations. We accept the statement of learned Counsel that he appeared as a personal obligation, on grounds of friendship, and without charge therefor. The argument that, even so, this ought to have been evaluated and included, is not supported by authority, and does not commend itself to us. In any event, we are unable to find any basis for such an evaluation. In our opinion, neither the petitioner nor any of the other respondents can be declared to have been duly elected, as none of them received a majority of the valid votes as prescribed by Section 101(a) of the Act. We therefore hold the election to be wholly void in terms of Section 98(d) of the Act. We find issue 4 accordingly in favour of the petitioner.

17. As the election is set aside on the question of the first respondent exceeding the prescribed limit of expenditure alone and as not one of the large number of other corrupt practices alleged by the petitioner has been proved to any extent, we hold that it will be just and proper that each party should be directed to bear the costs of this petition.

Pronounced in open Court, this, the 28th day of February, 1953.

M. ANANTANARAYANAN, *Chairman.*

P. RAMAKRISHNAN, *Judicial Member.*

B. V. VISWANATHA AIYAR, *Advocate-Member.*

Petitioner's witnesses:—

1. Munusami Goundar (Petitioner).
2. N.E. Raghunathan.
3. Adimoola Goundar.
4. Ponnuswami Goundar.
5. Punniakoti Naicken.
6. Doraisami Naidu.
7. Chockalinga Goundar.
8. Munivelu Goundar.

Respondents witness:—

1. S. Khadir Sheriff Sahib (first respondent).

Court-witness:—

1. M. Janakirama Mudaliar.

Petitioner's Exhibits —

- | | | |
|---------|----------------------------|---|
| A-1. | 6-12-1952 | Letter written by the Secretary, Election Commission, India, to the Chairman, Election Tribunal, Vellore. |
| A-2. | 12-9-1951 | Receipt No. 6198 granted by the Tamil Nadu Congress Committee to the first respondent for payment of Rs. 500. |
| A-2(a). | do. | Counter-foil of Exhibit A-2. |
| A-3. | do. | Credit entry of Rs. 500 at page 48 made in the cash book maintained by the Tamil Nadu Congress Committee, Madras. |
| A-4. | do. | Application put in by the first respondent to the Tamil Nadu Congress Committee, Madras, for being elected as a Congress candidate. |
| A-5. | | Printed instructions to persons acting as Congress candidates |
| A-6. | | Copy of the circular issued by the Tamil Nadu Congress Committee Madras, to the Congress candidates. |
| A-7. | 24-9-1951 to
24-5-1952, | A copy of the accounts showing the receipts and disbursements of the North Arcot District Congress Committee, Vellore, signed by Sri M. Janakirama Mudaliar (C.W.I.). |
| A-8. | 11-12-1951 | A duly authenticated copy of the telegram sent by Sri R.A. Subhan to the Chief Secretary to the Government of Madras. |
| A-9. | 12-12-1951 | A copy of the hand bill published by Sri J. Ponranga Reddiar and others. |
| A-10. | 4-11-1951 | A report made in Dinathanthi by Sri N. C. Pappanna Goundar of Nathampalli village. |
| A-11. | 10-3-1952 | Certified copy of the return of Election expenses submitted by the first respondent to the Returning Officer, Ranipet Constituency. |

Respondents' Exhibits

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|---------|--------------------------------|--|
| B-1. | 13-7-1951 | A registration copy of the agreement entered into between the first respondent and the Government of India. |
| B-2. | 5-1-1952 | A copy of the handbill published by Sri K. G. Munusami Goundar and others. |
| B-3. | From 1-4-1951
to 12-10-1951 | First respondent's day book. |
| B-3(a). | 16-9-1951 | A debit entry of Rs. 500 at page 398 made in the first respondent's day book, Exhibit B-3, as paid to the Tamil Nadu Congress Committee, Madras. |
| B-3(b). | 23-9-1951 | A debit entry of Rs. 500 at page 415 made in the first respondent's day book, Exhibit B-3, as paid to the District Congress Committee, Vellore. |
| B-4. | | Copy of the return of the Election expenses submitted by the first respondent to the Returning Officer, Ranipet Constituency. |
| B-5. | 9-11-1951 | Rules issued by the Returning Officer, Ranipet Constituency regarding the nomination of Election Candidates. |

M. ANANTANARAYANAN, *Chairman.*

New Delhi, the 20th March, 1953

S.R.O. 588.—WHEREAS the election of Shri K. Lakkappa, Chairman, Rural Development Committee, Hassan District, Mysore State, as a member of the Legislative Assembly of the State of Mysore from the Channarayapatna Constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri N. G. Narasimhegowda s/o Shri Gujlegowda, Nuggihalli, Channarayapatna Taluk, Hassan District, Mysore State;

AND WHEREAS the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act for the trial of the said petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Election Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order.

IN THE COURT OF THE ELECTION TRIBUNAL, BANGALORE.

Dated the 24th day of February, 1953

PRESENT:

1. Sri V. Kandaswami Pillai, B.A., B.L., Judge, High, Court of Mysore (Retired)—*Chairman*.
2. Sri H. Hombe Gowda, B.Sc., LL.B., Additional District and Sessions Judge, Bangalore—*Member*.
3. Sri Mir Iqbal Hussain, B.A., B.L., Advocate—*Member*.

ELECTION PETITION No. 67 of 1952.

Petitioner:—

Sri N. G. Narasimhegowda son of Gujje Gowda, aged about 34 years, District Board Member and landlord, residing at Nuggihalli, Channarayapatna Taluk, Hassan District, Mysore State, C/o Sri V. Krishnamurthi, advocate, No. 4, Kumara Park Extension, Bangalore 1.

Versus

Respondents:—

1. Sri K. Lakkappa, B.A., LL.B., son of Kalegowda, aged about 35 years, advocate, Chairman, Rural Development Committee, Hassan District, and Partner The Bharathi Trading and Industrial Co. Hassan, Mysore State.
2. Sri S. B. Jogannagowda, son of Bore Gowda, aged about 45 years, landlord, residing at Sosalagere, Nuggihalli Hobli, Channarayapatna Taluk, Hassan District, Mysore State.

This is a petition filed under Section 81 of The Representation of the People Act of 1951, by the Petitioner, received by registered post on 24th March 1952 by the Election Commission, India, praying that the election of the first Respondent to the Mysore State Legislative Assembly from the Channarayapatna Constituency may be declared to be void and the Petitioner be duly declared elected and/or the election be declared to be wholly void, with such proper directions as to costs and other reliefs as the Tribunal may deem fit to pass.

JUDGMENT

Shri H. Hombe Gowda and Sri Mir Iqbal Hussain:—

1. This is an Election Petition filed under Section 81 of the Representation of the People Act, 1951, by the Petitioner, Sri N. G. Narasimhegowda, praying that the election of the first Respondent to the Mysore State Legislative Assembly from the Channarayapatna Constituency, may be declared to be void and that he may be duly declared elected or in the alternative the entire election be declared to be wholly void.

2. The Petitioner and the Respondents were the validly nominated candidates for the Election that was held on 16th January 1952 to the Mysore State Legislative Assembly from Channarayapatna Constituency. The first Respondent, Sri K. Lakkappa, was declared duly elected, having secured the highest number of votes at the polls. The Petitioner objected to the acceptance of the nomination papers of both the Respondents before the Returning Officer on the ground that both of them had subsisting contracts with the Government of Mysore at the time they presented their nominations and as such, they were disqualified for being chosen

as members to the Mysore State Legislative Assembly from the Constituency. The Returning Officer rejected the objection and accepted the nomination papers of both the Respondents and the Election was conducted. After the result of the Election was declared, the Petitioner filed this Petition before the Election Commission and after due formalities this Petition has been referred to this Tribunal for adjudication.

3. The Petitioner has stated in his petition that the act of the Returning Officer in accepting the nomination papers of both the Respondents was improper and that the improper acceptance of the nomination papers has materially affected the result of the Election and as such the Election is liable to be declared as wholly void. According to the Petitioner, the first Respondent was disqualified for being chosen as a member to the Mysore State Legislative Assembly since he had incurred the following disqualifications, *viz*—

(a) The Bharathi Trading and Industrial Company, Hassan, of which the first Respondent was a member, had subsisting contracts with the Deputy Commissioner, Hassan District, representing the Government of Mysore, for supply of Mangalore tiles for the use of the construction of houses for the Depressed people in Hassan District and that the contract for supply of these tiles was subsisting, even on the date on which the first Respondent presented his nomination paper;

(b) The Bharathi Trading and Industrial Company, of which the first Respondent was a partner, had entered into an agreement or contract with the Deputy Commissioner, Hassan District to transport food grains in their lorries in Hassan District and that the said contract was still subsisting on the relevant date, *viz.* the date on which the first Respondent presented his nomination on the notice of candidature to the Returning Officer;

(c) That the first Respondent was a Director of the Karnatak Construction Company, Limited, a company registered under the Mysore Companies Act with its Head Office at Davanagere City and that the Firm had undertaken the contract works for the construction of buildings and bridges under the Government of Mysore and those contract works were being executed and the contracts were subsisting even on the date on which the first Respondent presented his nomination paper;

(d) That the Bharathi Trading and Industrial Co., had borrowed a sum of Rs. 50,000 from the Government of Mysore and the Government of Mysore had acquired a financial interest in the Company;

(e) That the name of the first Respondent had not been entered in the Voters List and as such he was not entitled to be nominated as a candidate for Election to the Mysore State Legislative Assembly from Channarayapatna Constituency; and

(f) That the first Respondent was the Chairman of the Rural Development Committee in Hassan District and was drawing a salary of Rs. 100 per month on that account and the Ordinance No. 4 of 1951 under which the Government of Mysore had removed the disqualification was 'ultra vires'.

So far as the second Respondent is concerned, the case of the Petitioner is that he had entered into a contract with the Government of Mysore for the construction of a Local Fund Dispensary at Didiga in Channarayapatna Taluk, Hassan District, through his undivided son Sri Kantharaj and as such was disqualified for being chosen as a member to the Mysore Legislative Assembly, under Section 7(d) of the Representation of the People Act of 1951. The Petitioner contended that the order passed by the Returning Officer accepting the nomination papers of both the Respondents in spite of the above objections raised by him was improper and that the improper acceptance of these two nomination papers materially affected the result of the Election. The Petitioner has alleged that the Election was liable to be set aside and declared as wholly void. The Petitioner also stated that there were serious omissions and infractions of, and non-compliance with, mandatory provisions of law for the safe and due preservation of the ballot boxes used in the Constituency and the same was brought to the notice of the Returning Officer by him at the time of counting of the votes. He also stated that the strong room in which the several ballot boxes had been preserved had been opened on 20th of January 1952 in the presence of the brothers of the first Respondent and that he had complained about it to the Election Commission, Government of India, New Delhi, by a petition sent by registered post on 19th January 1952. The Petitioner further stated that he had reasons to believe that the said strong room was got opened with a view to tamper with the ballot boxes. According to the Petitioner this serious non-compliance with the rules for the safety of the ballot boxes between the conclusion of the

poll and the counting of the votes had materially affected the result of the Election and except for this infraction, he would have got the highest number of votes and would have been declared elected.

4. Both the Respondents have opposed the Petition. The first Respondent has raised the following objections in his written statement.

(a) That the petition is liable to be rejected under Sub-Section 2 of Section 83 of the Representation of the People Act, 1951, since the Petitioner has not paid the court fee under Article 22 of Schedule 2 of the Court Fees Act.

(b) That the Petitioner has not impleaded all the necessary parties to the petition and that it is not true that only the Petitioner and the Respondents are the necessary parties.

(c) That it is true that he is a partner of the Bharathi Trading and Industrial Company, Hassan, which supplies, among other goods, building materials, but it is not correct to say that the Bharathi Trading and Industrial Company had both standing tenders and continuing contracts with the Government of Mysore on the date on which he presented his nomination paper to the Returning Officer.

(d) That it is not true that the Bharathi Trading and Industrial Company made any tender to the Deputy Commissioner, Hassan District, for the Supply of Mangalore tiles, etc., on 20th September 1951 or that the said tender was accepted. The fact, according to the first Respondent, is that the Deputy Commissioner, Hassan District, called for tenders for the supply of tiles and ridge tiles for the construction of houses of depressed class people for the year 1950-51 (year ending 31st March 1951) in No. R4.C.31/50-51 on 8th September 1950 and the Firm submitted its tender, which was accepted and the contract terminated on 31st March 1951. The final bill for the supplies made under this contract was submitted by the Firm on 30th March 1951 and the payment in full was received on 16th June 1951. The Deputy Commissioner had requested the Firm to supply 8,000 flat tiles and 200 ridge tiles in the first week of September 1951 and that was a casual or stray order and was not in pursuance of any standing contract. There was no contract with the Government to buy their requirements from the Firm or for any particular period and the Government, as any other customer, made some purchases from the Firm as they have done from other Firms as well. The inference sought to be drawn by the Petitioner from these supplies that the several supplies were made in pursuance of any standing contract, is not logical or warranted by the facts. The first Respondent also stated that the fresh tender for the supply of tiles for the subsequent year viz. 1951-52 had been called for subsequently and that a firm by name Sri Rama Tile and Timber Mart had submitted its tender and the same was accepted on 9th May 1951. Therefore, according to the first Respondent, the decision of the Returning Officer, that there was no subsisting contract between the Firm Bharathi Trading and Industrial Company, Hassan and the Government of Mysore, on the date on which the first Respondent submitted his nomination and that the first Respondent had not incurred any disqualification contemplated under Section 7(d) of the Representation of People Act was correct.

(e) It was true that Bharathi Trading and Industrial Company, Hassan, were plying their lorries for hire to transport the food grains in Hassan District, having entered into an agreement with the Deputy Commissioner, Hassan District in that behalf till the end of July 1951. But the Firm pleaded its inability to place the lorries at the disposal of the Deputy Commissioner for transportation of food grains from the middle of September 1951 and sought for the termination of the contract and the contract had been terminated with effect from 1st October 1951. The security deposit of Rs. 1,000 that had been made by the Firm had also been refunded to the Firm. The first Respondent, therefore, submitted that the allegations of the Petitioner made in the petition that the Government of Mysore were engaging the lorries of the Firm for hire even on the date of the petition and there was a contract going on in the usual manner even at the time when the first respondent presented his nomination paper were all false.

(f) It is true that the first Respondent was once a Director of the Karnatak Construction Company, Limited, and that the Company had taken up contracts with the Government of Mysore for the construction of buildings. But no contract was subsisting at the time when he filed the nomination paper. Further he had absented himself from three consecutive meetings of the Directors and from all the meetings of the Directors for a continuous period of more than three months without leave of absence from the Board of Directors and by virtue of Article 97(f) of the Articles of the Association of the Company he had vacated his office as

Director earlier to the filing of his nomination paper. That he had submitted his resignation to the office of the Director on 19th November 1951 and the same had been accepted and as such he had not incurred any disqualification on account of being a Director of the Karnatak Construction Company, Ltd., at the time when he presented his nomination paper.

(g) The first Respondent admitted that the Bharathi Trading and Industrial Company, Hassan, had borrowed a sum of Rs. 50,000 from the Government of Mysore, on the mortgage of their assets and stated that it was not correct to state that on that account the Government of Mysore had acquired any financial interest in the Company so as to disqualify the first Respondent, who was a partner of the Firm, under Section 7(e) of the Representation of People Act.

(h) The first Respondent admitted that he was the Chairman of the Rural Development Committee, Hassan District and in that capacity was drawing a sum of Rs. 100 per month, as honorarium. He has further stated that the Government of Mysore had removed the disqualification by notification issued in that behalf and as such it was not correct to state that he was disqualified for being chosen as a member to the Legislative Assembly.

(i) He further stated that it is not correct to state that his name had not been entered in the Electoral Roll. According to the first Respondent his name was entered in the Electoral Roll as "Lakshmappa" and it was a printing error. The original manuscript deposited in safe custody contained his name correctly as "Lakkappa" and the Returning Officer who perused the original Voters' List accepted his nomination paper, having been satisfied that his name had been correctly entered in the manuscript Voters' List at the time of scrutiny.

(j) The first Respondent denied knowledge of all the other allegations that had been made by the Petitioner with regard to the disqualification of the second respondent. The first Respondent did not admit the statement of the Petitioner that he would have been elected from Channarayapatna Constituency if the nomination paper of the first Respondent had not been accepted. The first Respondent referred to the applications that had been filed by a number of other persons who were duly nominated but who subsequently withdrew their nominations, since the nomination paper of the first Respondent was accepted by the Returning Officer. The first Respondent further denied that there had been any omissions or infractions or non-compliance with the mandatory provisions of law for the safety and due preservation of the ballot boxes and stated that the petitioner should strictly prove all those allegations.

5. The second Respondent stated in the course of his written statement that it was false that he had entered into a contract, through his undivided son Kantharaj with the Government of Mysore, for the construction of a Local Fund Dispensary at Didiga in Channarayapatna Taluk. He stated that it was true that his son Kantharaj, who was an undivided member of his family, was constructing a hospital at Didiga but it was utterly false to state that he had entered into any contract with the Government. The building, according to the second Respondent, was constructed by Kantharaj at his own cost without any direct or indirect financial assistance from the Government with a view of gifting the same after construction to the Government of Mysore for the purpose of opening a Dispensary in the name of the grand father of the second Respondent. Neither this Respondent nor his son Kantharaj had entered into any contract for construction of the building with the Government and as such it was not correct to say that the second Respondent had incurred any disqualification under Section 7(d) of the Representation of People Act of 1951.

6. The Petitioner in the course of his reply statement stated that the objections of the first Respondent that the Petition was liable to be rejected for non-payment of court fee, that the other candidates who withdrew their candidatures before election was held were necessary parties, were untenable. He further stated that there was a contract for the supply of tiles between the Firm, of which the first Respondent was a partner and the Government and the supply of 8000 tiles made by the Firm on an order placed by the Deputy Commissioner, Hassan, was in pursuance of that contract and the legal connotation that the first Respondent wanted to put on the supply was not correct. He further stated that even if the Government made mere purchases of tiles on and often, there was still contract in respect of which the Firm was entitled to get money and as such fundamentally there was a standing contract between the Government and the Firm,—Bharathi Trading and Industrial Company. The Petitioner further denied the statement of the first Respondent that there was any termination of the contract for transportation of

food grains in the lorries of the Firm on and from 1st October 1951 as alleged by the first Respondent. According to him the transactions in respect of the lorry hire were continuing and the account was still subsisting and as such the first Respondent was disqualified from being chosen as a member to the Mysore Legislative Assembly, on the date of his nomination. He further stated that the first Respondent had incurred a disqualification, having been a Director of the Karnatak Construction Company and that his allegations that he had ceased to be a Director and had resigned his Directorship were all false. The Petitioner further stated that the first Respondent was holding an office of profit in being the Chairman of the Rural Development Committee, Hassan and as such was disqualified for being chosen as a member to the Legislative Assembly. The Petitioner reiterated his allegation that there was a contract for the construction of a hospital, between Kantharaj, son of the second Respondent and the Government of Mysore and on that account the second Respondent was disqualified from being chosen as a member of the Mysore Legislative Assembly and that the result of the Election had been materially affected by the improper acceptance of the nominations of both the Respondents.

7. Based on the above pleadings, the following issues were raised in the case:—

ISSUES

(1) Whether the first Respondent is Chairman of the Rural Development Committee for Hassan District on a remuneration of Rs. 100 per mensem, since prior to his nomination? If so, whether he is holder of office of profit under the Government of Mysore, and was thus disqualified for being chosen as member of the State Legislative Assembly under Article 191(i)(a) of the Constitution of India?

Or

Whether the first Respondent has been exempted by the Government of Mysore by means of a Notification from incurring the disqualification and if so, whether the exemption is valid under Article 191(i)(a) of the Constitution?

(2) (a) Whether the Bharathi Trading and Industrial Company of which the first Respondent is a partner, has entered into a contract with the Government of Mysore, through the Deputy Commissioner, Hassan District on a tender dated 20th September 1950, accepted on 4th November 1950, for the supply of Mangalore tiles of various qualities for Rural Development work?

(b) Whether the Deputy Commissioner, Hassan District, placed an order with the Bharathi Trading and Industrial Company to supply 8000 flat tiles and 200 ridge tiles for construction of the houses destroyed by accidental fire in Sulgalale village, Belur Taluk and whether it was in continuation of the above contract? If so, whether it is in the nature of a standing contract for supply of goods to the appropriate Government, the Government of Mysore, for execution of work and performance of services undertaken by it and thus the first Respondent was disqualified for being chosen as a member of the Legislative Assembly under Section 7(d) of the Representation of the People Act, 1951?

Or

Whether the Company entered into a contract with the Government of Mysore on tender called for by the Deputy Commissioner, Hassan District in his Notification, dated 8th September 1950, for the supply of tiles and ridge tiles for construction of houses for the Depressed Class and the contract was fulfilled by it prior to 31st March 1951 and payment was received in full on 16th June 1951?

(3) Whether the Bharathi Trading and Industrial Company is transporting food grains for the Government of Mysore, in its lorries under contracts of hire with it, since prior to the first Respondent's nomination?

Or

Whether the contract was terminated with effect from 1st October 1951 on the firm having pleaded inability to ply their lorries for hire for the purpose?

(4) Whether the first Respondent is a Director of the Karnatak Construction Company, Ltd., since prior to his nomination? and

Whether the Company's contracts with the Government of Mysore to construct three buildings are still subsisting and if so, whether the first Respondent is disqualified for being chosen as a member of the Legislative Assembly under Section 7(d) of the Act?

Or

Whether his Directorship ceased by virtue of Article 97(i) of the Articles of Association on account of his absence from three consecutive meetings of the

Directors and from all the meetings of the Directors for a continuous period of more than three months without leave of absence from the Board of Directors prior to his nomination?

(5) Whether he resigned his Directorship also and it was accepted with effect from 19th November 1951, a day prior to his nomination?

(6) Whether he is not a Director holding an office of Profit under the Company? If so, whether he was not disqualified for being chosen as a member of the Legislative Assembly, coming within the purview of Section 8(d) of the Representation of the People Act, 1951?

(7) Whether the Government has acquired a financial interest in Bharathi Trading and Industrial Company by having lent Rs. 50,000 to it? If so, whether the first Respondent was disqualified for being chosen as a member of the Legislative Assembly under Section 7(e) of the Act?

(8) Whether the name of the first Respondent was not entered in the electoral roll of the Constituency as a voter and he was not therefore entitled to stand as a candidate for the election?

Or

Whether the name 'Lakshmappa' as against serial number 130, Block 2, Hassan Town Municipality in the electoral roll is a printing error for 'Lakkappa' the name of the first Respondent?

(9) Whether the candidates who withdrew their candidatures before the election are necessary parties to the Election Petition?

(10) Whether the second Respondent has entered into a contract with the Government of Mysore, through his undivided son Sri Kantharaj, for the construction of a building for Local Fund Dispensary at Didiga, Channarayapatna Taluk, out of their joint family funds, prior to his nomination and if so whether the contract is still subsisting? If so, whether he was disqualified for being chosen as a member of the Legislative Assembly under Section 7(d) of the Act?

Or

Whether the said building is being constructed by Sri. Kantharaj out of his own funds as a charitable endowment in the name of the second Respondent's grandfather?

(11) Whether 39 ballot boxes in which the votes of the petitioner had been cast, had been tampered with before the counting of votes as alleged by the petitioner in paragraphs 6 and 7 of his Election Petition?

(12) Have the results of the election been materially affected by any illegal acceptance of nomination of respondents 1 and 2 or any of them?

(13) Whether the election petition is liable to be dismissed for non-payment of court fee thereon?

(14) To what reliefs, if any, are parties entitled?

8. The Petitioner examined 10 witnesses, including himself to substantiate his case. The first Respondent examined himself and two witnesses on his behalf. The second Respondent examined himself and closed his case. A number of documents have been filed through the several witnesses that have been examined in the case.

9. The first issue and the alternative issue may conveniently be tried together, since they relate to one and the same subject. The fact that the first respondent was the Chairman of the Rural Development Committee for Hassan District, at the time when he presented the nomination paper and was drawing a remuneration of Rs. 100 per mensem, since prior to his nomination has been admitted by the first Respondent himself. P.W. 6 Ramdoss has also deposed that the first Respondent was the Chairman of the Rural Development Committee for Hassan District from 20th February 1950 to 1st August 1952 and that he was drawing a sum of Rs. 100 per mensem as honorarium or remuneration till 1st August 1952. It was contended by the Petitioner that since the first Respondent was drawing a remuneration of Rs. 100 per mensem at the time he presented his nomination, it should be held that he was holding an office of profit under the Government of Mysore and as such is disqualified as being chosen as a member of the Mysore Legislative Assembly

under Article 191 (i) (a) read with Article 238 of the Constitution of India. The first Respondent on the other hand contended that the Government of Mysore had removed the disqualification attached to the office of the Chairman of the Rural Development Committee by a Notification and as such he was not disqualified for being chosen as a member as alleged by the Petitioner. Though the first Respondent had stated in his written statement that the Government of Mysore had removed the disqualification by an order or Notification issued, it was brought to our notice during the course of arguments that the Mysore Legislature had passed Act XXV of 1951, an Act for the removal of the disqualifications, and thereby had removed the disqualification attached to the Chairman and Member or a Director holding an office of profit, appointed by the Government. Sri. V. Krishna Murthy, the learned advocate for the Petitioner conceded that the Mysore Legislature had power to enact laws to remove the disqualification under the Constitution of India, but he contended that the Mysore Act XXV of 1951 was bad for indefiniteness, in view of the fact that the Mysore Legislature had a right to enact laws removing the disqualification of a holder of any office of profit appointed not only by the Government of Mysore, but also the Governments of other States including that of the Government of India and in the absence of any definite indication in the Act, that the disqualification that had been incurred by member, or a Chairman or a Director appointed by the Government of Mysore had been removed, the Act is invalid being indefinite and as such the first Respondent was not entitled to claim and get the benefit thereof. On the other hand Sri. G. R. Ethirajulu Naidu, the learned advocate for the first Respondent contended that there is no indefiniteness in the Act, inasmuch as the Act XXV had been enacted to remove the disqualifications attached to the Chairman and Members or the Directors holding offices of profit, appointed by the Government of Mysore. It was contended by him that in the absence of any other indication, the term "Government", as defined under the Mysore General Clauses Act was the "Government of Mysore" and no other Government. It was conceded by the learned advocate for the Petitioner that the Mysore General Clauses Act had not been superceded by the General Clauses Act of India. Therefore, there is no force in the contention of the Petitioner that the Act XXV of 1951 which was enacted to remove the disqualification incurred by certain categories of persons appointed by the Government of Mysore, which included the Chairman of the Rural Development Committees also, is invalid or 'ultra vires'. Hence, our finding on the first issue is that the first Respondent was Chairman of the Rural Development Committee for Hassan District and was drawing an honorarium of Rs. 100 per mensem at the time when he presented his nomination paper, but he was not disqualified for being chosen as a member of the Legislative Assembly in view of the fact that the Mysore Legislature had passed Act XXV of 1951, removing the disqualification attached to such offices.

11. *Issue No. 2.*—The fact that the Bharathi Trading and Industrial Company, of which the first Respondent is a partner, had entered into an agreement or contract with the Government of Mysore, through the Deputy Commissioner, Hassan District, on a tender dated 20th September 1950 presented by it, has been admitted by the first Respondent. It is also admitted by him that the tender was accepted by the Government and it was for the supply of Mangalore tiles, etc., for the construction of houses of Depressed Class people in the several taluks of Hassan District. Exhibit U dated 24th August 1950 is the tender Notification issued by the Deputy Commissioner, Hassan District calling for tenders for supply of Mangalore tiles. P.W. 6 has stated in his evidence that a copy of Exhibit U was sent to the Bharathi Trading and Industrial Company on 9th September 1950. Exhibit W dated 20th September 1950 is the tender made by the Firm in response to the tender Notification. Exhibit Y is the receipt for having deposited the earnest money of Rs. 250 by the Bharathi Trading and Industrial Company and according to P.W. 6, this was enclosed to Exhibit W. P.W. 6 has further stated that the Deputy Commissioner accepted the tender made by the Firm as per Exhibit Z and subsequently orders were placed with the Firm for supply of tiles. The first Respondent has admitted in the course of his evidence that the Company had supplied Mangalore tiles of different qualities to the several taluks of Hassan District as per the terms of Exhibit Z upto the end of March 1951. Hence, our finding on issue No. 2 (a) is in the affirmative.

12. *Issue No. 2 (b).*—The fact that the Deputy Commissioner, Hassan District placed an order for the supply of 8,000 flat tiles and 200 ridge tiles for the construction of houses destroyed by accidental fire in Belur Taluk on 8th September 1951 as per Ext. AA is established by the evidence of P.W. 6. This witness has stated that the Bharathi Trading and Industrial Company, Hassan supplied tiles in accordance with Exhibit AA. This fact, that the supply was made by this Firm, has

also been admitted by the first Respondent. According to the first Respondent it was a stray or casual purchase made by the Deputy Commissioner, Hassan District just like any other purchaser and it had nothing to do with any contract that was subsisting at the time the order was placed. The question for consideration, therefore, is whether this supply of 8,000 flat and 200 ridge tiles made on 8th September 1951 by the Bharathi Trading and Industrial Company to the Amildar of Belur Taluk, on an order that was placed with them by the Deputy Commissioner, Hassan District, was in pursuance of an implied contract or whether it was only a stray or casual purchase made by the Deputy Commissioner, just like any other purchaser from the Firm. Sri. V. Krishna Murthy, advanced some interesting arguments before us as to the date or period of commencement of the Election and contended that the Election commenced at least from the date of the proclamation issued by the Rajpramukh and a candidate should be declared to be disqualified if he was suffering from any disqualification on or subsequent to that date. The opening sentence of Section 7 of the Representation of People Act itself gives the clue as to the date of commencement of the disqualifications. In our opinion, a candidate should not have incurred any disqualification for being chosen as a member on the date of his nomination and that is the material point. Hence, we do not agree with Sri. Krishnamurthy that the disqualification commences from the date of the proclamation. Issue No. 2 (b), in our opinion, is a bit loosely framed and does not cover the pleadings of the parties fully. But all the parties concerned have understood the real implication and the effect of the issue and have adduced evidence to substantiate their respective contentions and none of them are in any way prejudiced. As already stated, the Petitioner objected to the nomination of the first Respondent. The Returning Officer rejected the objection of the Petitioner and accepted the nomination of the first Respondent. It is now contended before us by the learned advocate for the Petitioner that the decision of the Returning Officer was erroneous and his improper acceptance of the nomination paper of the first Respondent has materially affected the result of the election. The Petitioner has adduced evidence in the case to substantiate his allegation that there was an existing contract between the Bharathi Trading and Industrial Company of which the first Respondent was a partner on the one hand and the Deputy Commissioner, Hassan on the other. The first Respondent has been on the other hand contending that the supplies made by the Firm were only casual supplies on credit basis and there was no subsisting contract on the date on which he filed his nomination paper so as to disqualify him under Section 7 (d) of the Representation of the People Act of 1951. In our opinion the evidence adduced by the Petitioner clearly indicates that there was a subsisting contract between the Firm of the first Respondent and the Government of Mysore represented by the Deputy Commissioner, Hassan District, on the date on which the first Respondent presented his nomination paper and the first Respondent had incurred the disqualification under Section 7 (d) of the Representation of the People Act of 1951 and that the Returning Officer improperly accepted the nomination paper of the first Respondent.

13. It was contended by the learned advocate for the first Respondent that the Petitioner has referred in his petition only to a single supply of 8,000 flat and 200 ridge tiles in response to an order alleged to have been placed by the Deputy Commissioner, Hassan District with the Bharathi Trading and Industrial Company, Hassan on 8th September 1951 and has tried to construe that supply as having connection with the original contract of the Firm under an agreement entered into between the said Firm and Deputy Commissioner, Hassan for the supply of tiles in the year 1950-51 and therefore, he should restrict himself to that single transaction and stand or fall on that ground only and should not be allowed to take advantage of any other evidence now advanced regarding the supply of tiles subsequent to or prior to that period and to enlarge his case and contend that there was a subsisting contract for the supply of tiles between the Bharathi Trading and Industrial Company on the one hand and the Deputy Commissioner, Hassan on the other. This argument is not, in our opinion, based on the proper reading of the petition. The Petitioner has stated in so many words in the latter portion of paragraph 3 (a) of the petition that the Bharathi Trading and Industrial Company, Hassan, of which the first Respondent was a partner had a subsisting contract with the Deputy Commissioner, Hassan District representing the Government of Mysore, for supply of Mangalore tiles for the use of the construction of houses for the depressed class people in Hassan District and that the contracts for supply of these tiles were subsisting, even on the date on which the first Respondent presented his nomination papers. The Petitioner has stated in para 3 of his petition as follows:—

“When these objections were critically brought to the notice of the Returning Officer, he misapplied the law and over-ruled the objection on the ground that this order might relate to 1950-51 and not to 1951-52 and that the earnest money of

Rs. 250 had been returned. The reason adduced by the Returning Officer is entirely baseless and is one which is not countenanced by the law. The only requirement is that there should be a contract which is still subsisting between the candidate and the Government, at least on the date on which his nomination paper is tendered and/or accepted. The nomination paper was tendered on 20th November 1951 and it was accepted on 25th November 1951. It is immaterial whether the original tender was confined to 1950-51 or any other fresh contract was made subsequently. The substance of the matter is that there was a contract for the supply of goods to or for works undertaken by the appropriate Government. The Petitioner states that since there was a subsisting contract between the said Firm of which the first Respondent is a partner and the Government of Mysore his nomination was liable to be rejected under Section 7 (d) of the Representation of the People Act, 1951." It is thus, clear from the above that the Petitioner had made it abundantly clear from the beginning that there was a subsisting contract between the Bharathi Trading and Industrial Company, Hassan, of which the first Respondent was a partner and the Government of Mysore, represented by the Deputy Commissioner, Hassan District and on that account the first Respondent was disqualified for being chosen as a member to the Mysore Legislative Assembly from the Channarayapatna Constituency, under Section 7 (d) of the Representation of the People Act. The first Respondent has met this case of the Petitioner and has stated in his written statement in paragraph 3 as follows:

"It is true that the Deputy Commissioner requested the Firm to supply 8,000 flat and 200 ridge tiles in the first week of September 1951. That was a casual or stray order and was not in pursuance of any standing contract. There was no contract with the Government to buy their requirements from the Firm or for any particular period. The Government, as any other customer, have made some purchases from the Firm as they have done from other firms as well. The inference sought to be drawn by the Petitioner that the supplies must be deemed to be in pursuance of any standing contract is not logical or warranted by the facts..... This Respondent submits that the decision of the Returning Officer is correct, that there was no subsisting contract between the Firm and the Government on the date of his nomination and he is not affected by the provisions of Section 7, Clause (d) of the Representation of the People Act."

It is clear from the above that the first Respondent had fully understood the implication and scope of the case of the Petitioner in this regard.

14. Section 7 of the Representation of the People Act of 1951 prescribes the disqualifications for membership of Parliament or of a State Legislature and the clause of that Section relevant for purposes of this case is as follows:—

Section 7.—"Disqualifications or membership of Parliament or of a State Legislature.—A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament or of the State Legislative Assembly or Legislative Council of a State".

Clause (d).—"If, whether by himself or any person or body of persons in trust for him or for his benefit or on his account, he has any share or interest in a contract for the supply of goods to, or for the execution of any works or the performance of any services undertaken by, the appropriate Government."

The burden of proving that the first Respondent was suffering from or had incurred the disqualification under section 7(d) of the Representation of the People Act of 1951 is on the petitioner and he should establish the following ingredients:—

- (a) that the first Respondent was a partner of the Bharathi Trading and Industrial Company, Hassan and had a share in the contract for the supply of goods;
- (b) that the Bharathi Trading and Industrial Company had contracted for the supply of goods viz. Mangalore tiles to the appropriate Government; and
- (c) that the firm Bharathi Trading and Industrial Company, Hassan supplied in pursuance of the contract to the appropriate Government, Mangalore tiles for the construction of the houses for Depressed Class People in Hassan District.

It is only when the Petitioner succeeds in establishing all these ingredients that he can ask this Tribunal to come to the conclusion that the first Respondent was suffering from the disqualification prescribed under section 7(d) of the Representation of the People Act of 1951. The term "appropriate Government" has been defined in section 9(a) of the Representation of People Act of 1951, as the Central Government in relation to either Houses of Parliament and the State Government in relation to the Legislative Assembly or the Legislative Council of the State. The first Respondent was a candidate for election to the Mysore Legislative Assembly and consequently in this case, the appropriate Government would be the Government of Mysore. In other words, therefore, the first Respondent would be disqualified for being chosen as, and for being a member of the Mysore Legislative Assembly if he had any share or interest in a contract for the supply of goods to the Government of Mysore, on the date on which he presented his nomination paper, i.e. 20th November 1951. Section 7 of the Representation of the People Act of 1951 is a disabling enactment and it is an established principle of law of interpretation that enactments of this type should be strictly construed. The burden of establishing the fact that the first Respondent was suffering from all or any of the disqualifications contemplated under section 7 of the Representation of the People Act of 1951 is no doubt on the Petitioner, but we are not prepared to accept the proposition that the first Respondent or any Respondent in an Election Case is in the position of an accused and the Petitioner is in the position of a Complainant, in a criminal case. The contention of the first Respondent that he is under no obligation to offer satisfactory explanation and is entitled to get the benefit of doubt as in a criminal case, is, in our opinion, not correct. If in a case like the one on hand, the Petitioner adduced satisfactory evidence to prove that the several supplies made by the Firm were in accordance with or in pursuance of an implied contract and except for that implied contract the several supplies would not have been made by the Firm in the way in which they have been made, the first Respondent is under an obligation to rebut the same by adducing proper evidence on his behalf.

15. Before proceeding to discuss and consider the evidence adduced by the Petitioner to establish his allegation that there was a subsisting contract for the supply of goods between the first Respondent's firm and the Government of Mysore, on the relevant date, it is necessary that the following undisputed facts are borne in mind—

The Bharathi Trading and Industrial Company, Hassan, manufactures tiles and other building materials and supplies them to the several persons or institutions that require them. The first Respondent is a partner of the said Firm. The company had entered into an agreement with the Deputy Commissioner, Hassan District, in pursuance of their tender to supply tiles for the construction of houses for depressed classes in the year 1950-51 and that agreement expired on 31st March 1951. The Rural Development Commissioner in Mysore called for tenders for the supply of tiles for the use of the houses for Depressed Classes throughout the State for the year 1951-52. One N. S. Krishniah Setty of Sri Rama Tile Factory, Hassan submitted his tender and the same was accepted by the Rural Development Commissioner and the fact was duly intimated to the Deputy Commissioners of all the Districts in Mysore. The Bharathi Trading and Industrial Company, Hassan of which the first Respondent is a partner had not made any tender for the supply of tiles for the year 1951-52.

16. It is the case of the Petitioner that N. S. Krishniah Setty did not supply the tiles as per his tender and agreement when the demands for the supply were made by the Deputy Commissioner, Hassan District and on account of that default on the part of N. S. Krishniah Setty, the Deputy Commissioner, Hassan District, requested the several Amildars of Hassan District, to place orders for the supply of tiles with the Bharathi Trading and Industrial Company, Hassan. According to him the several supplies of tiles to the several Taluks on several occasions were made by the Bharathi Trading and Industrial Company, Hassan subsequent to the date of the default of N. S. Krishniah Setty on an open order that was placed by the Deputy Commissioner with the firm and statements of supplies made with the delivery vouchers and the bills for the cost of supplies made including the transportation charges, handling charges, etc. were all presented by the Firm to the respective Amildars and payments were received by the Firm, after the respective Amildars ascertained the amount that was payable to the Firm. It is the case of the Petitioner that the several supplies of tiles that were made to the several Taluks by the Bharathi Trading and Industrial Company subsequent to 6th June 1951 were all in pursuance of an implied contract for the supply of tiles between the Deputy Commissioner, Hassan District and the Firm. It was contended on the other hand by the learned advocate for the first Respondent that the several supplies of tiles made by the Bharathi Trading and Industrial Company, Hassan were only in the nature of casual supplies and were not made in pursuance

of any agreement or implied contract and as such they cannot be construed to be contracts for the supply of tiles in the sense they are understood in law.

What is a contract for the supply or sale of goods has been defined in Section 4 of the Sale of Goods Act as follows:—

- “(1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.
- (2) A contract of sale may be absolute or conditional.
- (3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some conditions thereafter to be fulfilled, the contract is called an agreement to sell.
- (4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.”

What are the necessary formalities for a contract for supply of goods has been clearly stated in Section 5 of the same Act and it is as follows:—

- “(1) A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price or both, or for the delivery or payment by instalments, or that the delivery or payment by instalments or that the delivery or payment or both shall be postponed.
- (2) Subject to the provisions of any law for the time being in force, a contract of sale may be made in writing or by word of mouth, or partly in writing and partly by word of mouth or may be implied from the conduct of the parties.”

It is clear from the above that in a contract for the sale of goods, the most essential condition is the payment of price for the supplies received by the party and that the contract for sale may be made either in writing or by word of mouth or partly in writing and partly by word of mouth or may be implied from the conduct of the parties. It is not the case of the Petitioner that the contract for the supplies of tiles by the Bharathi Trading and Industrial Company, Hassan for the year 1951-52 during which the several supplies were made by the firm and been reduced into writing and the several supplies were made by the Firm in pursuance of any such written agreement. According to him there was an implied contract between the Bharathi Trading Company, Hassan, and the Deputy Commissioner, Hassan District for the supply of tiles for the construction of houses for the Depressed Classes in that District and it is in pursuance of that implied contract that the Firm made several supplies on several occasions to the several Amildars, as and when the orders were placed by the several Amildars of the District, with the Firm.

In order to appreciate the rival contentions canvassed before us and to find out as to whether these was any subsisting contract between the Firm of the first Respondent and the Government for the supply of tiles on the date of the presentation of this nomination, i.e. 20th November 1951, as contended by the Petitioner, or whether the several supplies were only casual purchases as contended by the first Respondent, it is necessary to examine the entire correspondence and other records relating to the supply of tiles made by the Bharathi Trading and Industrial Company, which have been marked as Exhibits in the case. Admittedly, the Bharathi Trading and Industrial Company had not submitted their tender for the supply of tiles to the Rural Development Commissioner, in response to a Notification issued by him calling for tenders for supply of tiles for the year 1951-52. It was N. S. Krishniah Setty of Sri Rama Tiles Factory, Hassan that had submitted the tender and the same had been accepted by the Rural Development Commissioner and a communication had been sent to him to the Deputy Commissioner of all the Districts, requesting them to take supply of tiles from N. S. Krishniah Setty. P.W. 6, Ramdoss, who has been examined on behalf of the Petitioner and who is a clerk in the office of the Deputy Commissioner, Hassan, has stated that several orders of supply of tiles with the Bharathi Trading and Industrial Company were placed in the year 1951 on account of the fact that N. S. Krishniah Setty, who had entered into an agreement with the Rural Development Commissioner to supply tiles, had not supplied tiles when orders were placed with him. P.W. 6 has also stated in his evidence that there was nothing on record to show that orders for supply of tiles were placed with Bharathi Trading and Industrial Company on

the failure of Sri Rama Tiles Factory to supply the tiles during the year 1951-52. This statement is not correct. The first Respondent himself has produced Exhibit XIX, dated 6th June 1951 under which the Deputy Commissioner has instructed the several Amildars of his District that they may place orders for supply of tiles with the Bharathi Trading and Industrial Company, Hassan, since N. S. Krishniah Setty had not supplied the tiles as agreed to by him. The first Respondent has also admitted in the course of his cross-examination that the Bharathi Trading and Industrial Company made several supplies of tiles to the various Taluks, subsequent to 1st April 1951. He has stated "at times in 1951 the Deputy Commissioner had sent us communications to supply particular quantity of tiles to various stations and even after 1st April 1951 our Firm made those supplies". Some of these items in the bills spoken to by P.W. 6 relate to the supplies made by the Firm on the communications for the supply of tiles from the Deputy Commissioner. Exhibit XIX is a memo issued from the Office of the Deputy Commissioner, Hassan District, on 6th June 1951 and reads as follows:—

"As N. S. Krishniah Setty, Timber Merchant, Hassan has not supplied the Mangalore tiles for the orders placed with him, the Amildars of all the taluks are requested to place orders for the supply of Mangalore tiles with the Bharathi Trading and Industrial Company, Hassan, if there is urgent necessity for tiles. The rate of tiles is Rs. 185 per 1,000 first class roofing, Rs. 500 per 1,000 first class ridge tiles. The cost of the same may be paid by the Amildars of the concerned taluks." This was despatched to the several Amildars of the several Taluks of the Hassan District on 6th June 1951. There is another memo on Exhibit XIX which is as follows:—

"Copy to the Bharathi Trading and Industrial Company, Hassan for information and needful action."

It is clear from the above memo that N. S. Krishniah Setty had failed to supply Mangalore tiles to the several Amildars and as such the Deputy Commissioner instructed them that they may place orders with the Bharathi Trading and Industrial Company, Hassan for their requirements. The Deputy Commissioner had also fixed the rate of tiles in the above said memo and had further instructed the Amildars to make payments to the firm. A copy of Exhibit XIX had been sent to the Bharathi Trading and Industrial Company not only for information but also for needful action. It is not disputed that these several supplies of Mangalore tiles made were meant for the use of the houses to be constructed for or by the Depressed Class persons in Hassan District. P.W. 6 Ramdoss has stated in his evidence that it is on the basis of the original of Exhibit XIX that the Amildars made several purchases of Mangalore tiles from the Bharathi Trading and Industrial Company on credit and payments were made by them subsequently. The first Respondent has also admitted in his evidence that the Firm had made several supplies of tiles subsequent to 1st April 1951 i.e. even after their agreement for the supply of tiles for the year 1950-51 had expired. Exhibit CCC is a communication sent by the Deputy Commissioner, Hassan District to the Executive Engineer, Hassan on 17th August 1951 and it reads as follows:—

"I write to state that Messrs. Bharathi Trading and Industrial Company, Hassan and Sri N. S. Krishniah Setty, Sri Rama Tiles and Timber Merchant, Hassan have come forward to supply Mangalore roofing tiles and have produced sample tiles. The sample tiles of both the firms are herewith sent to you for kindly examining them and to intimate whether they are of good and first class quality."

P.W. 6 has admitted in the course of his evidence that this letter was despatched to the Executive Engineer, Hassan District on 17th August 1951. He has further stated that the Bharathi Trading and Industrial Company had produced sample tiles before the Deputy Commissioner, Hassan District, after Exhibit XIX was sent to them for needful action. Exhibit DDD is the reply sent by the Executive Engineer, Hassan District on 31st August 1951 to Exhibit CCC. The Executive Engineer has stated in Exhibit DDD that the two samples produced by the Bharathi Trading and Industrial Company were better than the other samples and that they may be selected. The several supplies of tiles amounting to more than 50,000 have been made to the various taluks of Hassan District subsequent to the date of Exhibit XIX as is clear from the following Exhibits. Exhibit TT is the Stock Book of Arkalgud Taluk and Exhibit TT(1) in it relates to the several supplies of tiles made by the Firm Bharathi Trading and Industrial Company, Hassan. It is seen that the Firm has made supplies of tiles on 10 occasions from 18th June 1951 upto 26th July 1951. The price of these tiles supplied has been paid on 18th December 1951. Exhibit AA is another requisition sent by the Deputy Commissioner, Hassan District on 8th September 1951, under which he has requested the Bharathi Trading and Industrial Company, Hassan to supply 8,000 flat and 200 ridge tiles to Belur

Taluk. This is a letter addressed to the Amildar, Belur Taluk and a copy of the said letter has been sent to the Bharathi Trading and Industrial Company. Exhibit JJ is a statement furnished by the Bharathi Trading and Industrial Company, Hassan, showing the supplies of tiles made by the said Firm to Belur Taluk from 13th September 1951 to 23rd October 1951. It is seen from this that the Firm had made supplies on 11 occasions during this period and had supplied about 17,000 tiles to Belur Taluk. The bills in respect of these supplies were sent on 24th October 1951 and the Firm had not only claimed the price of these tiles supplied but also transportation and handling charges in the bill Exhibit LL. The Amildar ascertained the amount payable on this account on 5th December 1951 and disallowed a sum of Rs. 27-2-0. Exhibit MM is a statement of supplies made by the Firm to Sakalespur Taluk from 27th September 1951 to 12th October 1951. The bill for these supplies was sent by the Firm to the Amildar, Sakalespur Taluk on 25th October 1951. Exhibit NN is a letter of even date that was sent by the Firm to the Amildar along with Exhibit MM requesting for the payment of money as per their bill. The Firm has stated in Exhibit NN that they had submitted a bill No. 158, dated 24th October 1951 for a sum of Rs. 1,054-9-0 for having supplies tiles as per the detailed statement attached to the bill with the delivery vouchers and have requested the payment of the bill at an early date. It is also seen from Exhibit NN that two deliver vouchers had been submitted by the Firm along with their bill. Exhibit PP is another statement showing the supplies of tiles made by the Firm from 30th October 1951 to 1st November 1951 to the same Taluk. The Firm, according to this Exhibit have supplied 6,000 flat and 200 ridge tiles and the bill for the amount was tendered by the Firm on 5th November 1951. Exhibit PP1 is an enclosing letter that was addressed by the Firm to the Amildar, Sakalespur Taluk, demanding payment of the amount. Exhibit QQ is another statement showing the supplies of tiles made by the Firm to the Manjarabad Taluk from 27th September 1951 to 1st November 1951. The statement shows that the Firm had supplied nearly 11,000 tiles on seven occasions to the Manjarabad Taluk during this period. The bill for these supplies was prepared by the Amildar on 15th November 1951. Exhibit RR is an acquittance roll relating to the payments made to the contractors for the supply of tiles to Manjarabad Taluk under the Depressed Class Remuneration Fund from 31st August 1951 and Exhibit RR1 is the entry therein relating to the payment of a sum of Rs. 2,400-5-0 to the Bharathi Trading and Industrial Company, Hassan by the Amildar on 5th December 1951, for the supplies above referred to under Exhibit QQ. Exhibit KK is the Cash Book of the Belur Taluk for the year 1951-52 and Exhibit KK1 is an entry relating to the payment of Rs. 3,862-1-0 to the Bharathi Trading and Industrial Company on 7th December 1951 and Exhibit KK2 relates to the payment of another sum of Rs. 1,347-1-6 on 26th February 1952 to the said Firm. Exhibit SS is the Cash Book of Arakalgud Taluk office for the year 1951-52 relating to the Depressed Class Remuneration Fund. Exhibit WW1 is the entry therein relating to the payment of Rs. 5,709-12-0 to the Firm on 5th March 1952. Exhibit UU is the Cash Book of Arasikere Taluk and Exhibit UU1 is an entry relating to the payment of money towards the supply of 6,000 tiles to the Bharathi Trading and Industrial Company, Hassan on 10th October 1951.

It is clear from the above that subsequent to the date of Exhibit XIX, the Firm had made a number of supplies of tiles to the several Taluks in Hassan District and was tendering its bills for the supplies made along with the delivery vouchers and the amounts due to the Firm were being ascertained by the respective Amildars and payments made. Exhibit CC is another letter that was addressed by the Deputy Commissioner, Hassan District to N. S. Krishniah Setty, Sri Rama Tiles and Timber Merchant, on 2nd November 1951. There is a memo attached to this letter which reads as follows:—

"Copy of the above is forwarded to the Commissioner for Rural Development in Mysore, Bangalore for favour of information. The present contractor Sri N. S. Krishniah Setty is found unable to supply the tiles with the result, that the work of the Department is at standstill. The working season has already commenced. A number of depressed class grantees are urging for grant of tiles. Kind permission may be given to purchase tiles from the Bharathi Trading and Industrial Company, Hassan at the approved rate of Rs. 185-0-0 per flat and Rs. 500 for ridge. The Executive Engineer who has examined the tiles has also certified that the tiles of the Bharathi Trading and Industrial Company are good."

R.W. 2 Hanumanthappa has admitted that a letter as per Exhibit CC was received by the Rural Development Commissioner. Exhibit XVII is a reply sent

by the Rural Development Commissioner to the Deputy Commissioner, Hassan District, to Exhibit CC and it is dated 26th November 1951, and it relates to the subject of supply and purchase of tiles from Bharathi Trading and Industrial Company, due to the failure of the approved Firm Sri N. S. Krishniah Setty. Sri Rama Tiles and Timber Mart, to supply good tiles in time. The Rural Development Commissioner had drawn to attention of the Deputy Commissioner, Hassan District to a letter of his office No. R6.539, dated 13th August 1951 wherein general permission had been accorded to purchase tiles from the local factories on failure of the approved Firm to supply tiles of good quality within the time limit specified by him and has instructed him to adopt the same in the present case. In paragraph 2 of the said letter the Rural Development Commissioner had requested the Deputy Commissioner to expedite his reply as regards the information to be furnished to the Vice-President, Hassan District Congress Committee in the matter of supply of tiles by the Bharathi Trading and Industrial Company called for by him in his letter dated 3rd November 1951. Exhibit BB is a letter addressed by the Amildar, Manjarabad Taluk, to the Deputy Commissioner, Hassan District, complaining that the Bharathi Trading and Industrial Company had been dumping their tiles even though no orders had been placed and requesting the Deputy Commissioner to instruct the Firm not to supply tiles to him. Exhibit DD is a letter addressed by the Deputy Commissioner to the Bharathi Trading and Industrial Company requesting the Firm to withhold the supply of tiles to Manjarabad Taluk *until further orders* (italicise is ours). This letter has been sent to the Firm by the Deputy Commissioner on 21st November 1951, i.e., a day after the first Respondent presented his nomination. The reading of Exhibit XIX, Exhibit BB and Exhibit DD together makes it abundantly clear that there was an implied contract between the Deputy Commissioner, Hassan District and the Firm Bharathi Trading and Industrial Company, Hassan, for the supply of Mangalore tiles at a fixed price to the several Taluks in Hassan District. If, as contended by the first Respondent, there was no such implied contract for the supply of tiles, there was no reason, whatsoever, why the Amildar of Manjarabad Taluk should have complained to the Deputy Commissioner, Hassan District, that the Firm Bharathi Trading and Industrial Company, Hassan, was dumping in tiles even though no orders had been placed with it and to request the Deputy Commissioner to instruct the Firm not to make any supplies, (as per Exhibit BB) on 1st November 1951. Further, there was no necessity for the Deputy Commissioner to have addressed the Firm to "*withhold the supply*" of tiles..... "*until further orders*". The use of the phrase "*withhold the supply of tiles until further orders*" clearly indicates that it was in pursuance of Exhibit XIX issued by the Deputy Commissioner on 6th June 1951 that the Firm was making the several supplies to the several Amildars and the Amildars had been requested to take the supply of tiles from the Bharathi Trading and Industrial Company and it is only the Deputy Commissioner that was competent to request the Firm to withhold or stop the supplies of tiles to the several Taluks. The decisive test is whether on proper construction of all the correspondence between the parties referred to above, the intention of the parties that they were contracting for the supply of tiles can be inferred. The paramount, intention of the parties in this case, as could be gathered from the above stated correspondence was to create a contract for the supply of tiles. After all it is the intention of the parties that governs in making and in the construction of all the contracts. It is a fundamental rule by which all questions as to the acceptance and nature of a contract must be decided. In this case the several Exhibits referred to above, particularly Exhibits XIX, BB and DD make it clear that the intention of the parties was that the Bharathi Trading and Industrial Company, Hassan, should make the supplies of Mangalore tiles required for the use of the Depressed Class people of Hassan District. The letter of the Deputy Commissioner, dated 16th June 1951, Exhibit XIX gives no room for doubt that the Bharathi Trading and Industrial Company had been requested by him to make the supplies. The Firm had regularly supplied the tiles during all the months to all the Taluks of Hassan District from the date of Exhibit XIX, throughout the year, and have supplied more than 50,000 tiles within a course of 5 months from the date of Exhibit XIX. It is clear, therefore, that there was an implied contract between the Bharathi Trading and Industrial Company and the Deputy Commissioner, Hassan District for the supply of tiles and the contract for the supply of tiles was going on as in the year 1950-51 except for the fact that it had not been reduced into writing as was done during the year 1950-51. If there was any doubt regarding the implication and the scope of Exhibit XIX, Exhibit DD, dated 21st November 1951 makes it clear beyond doubt that there was a contractual relationship between the Firm Bharathi Trading and Industrial Company and the Deputy Commissioner, Hassan District, for the supply of tiles for the year 1951-52 and the supply of tiles from the date of Exhibit XIX was being made in pursuance of that implied contract. The intention of the contracting parties in this case is clear, definite and admits

of no doubt. In this connection we are tempted to quote the following passage from the Book "The Principles of Contract" by Sir Frederick Pollock, at page 9:—

"If A with B's knowledge, but without any express request does work for B such as people as a rule expect to be paid for, if B accepts the work or its result, and if there are no special circumstances to show that A meant to do the work for nothing or that B honestly believed that such was his intention, there is no difficulty in inferring a promise by B to pay what A's labour is worth. And this is a pure incidence of fact, the question being whether B's conduct has been such that a reasonable man in A's position would understand from it that B meant to treat the work as if done to his express order."

It was brought to our notice by the learned advocate for the first Respondent that the Deputy Commissioner, Hassan District, had issued an endorsement as per Exhibit III(a) to him to the effect that there was no subsisting agreement between the Deputy Commissioner, Hassan District, and the Bharathi Trading and Industrial Company on the date on which the first Respondent presented his nomination paper. This Exhibit has been signed by the Personal Assistant to the Deputy Commissioner and is admittedly an endorsement issued by the Office of the Deputy Commissioner. What has been stated in this Exhibit is that there was no "agreement" between the Bharathi Trading and Industrial Company and the Deputy Commissioner, Hassan District. Obviously when the concerned authorities used the word "agreement" they meant that there was no written agreement. A contract need not be reduced into writing before one could contend that there was a contract for the supply of goods. In this view, we are not prepared to attach any value, whatsoever, to Exhibit III(a). The large volume of documentary evidence adduced by the Petitioner clearly establishes the fact that there was an implied contract between the Deputy Commissioner, Hassan District, on the one hand and the Bharathi Trading and Industrial Company on the other for the supply of Mangalore tiles during the year 1951-52.

17. It is clear from the brief survey of all the events and the correspondence narrated above that the various supplies of tiles made by the Bharathi Trading and Industrial Company, Hassan, to the several Taluks in Hassan District were made in response to or in pursuance of the implied contract that the Firm had entered into with the Deputy Commissioner, Hassan District, for the supply of tiles and that there was subsisting contract for the supply of tiles between the Firm and the Deputy Commissioner representing the Government of Mysore even on 21st November 1951, i.e. a day after the first Respondent presented his notice of candidature. Hence, our finding on issue No. 2(b) is that the contract for the supply of tiles by the Bharathi Trading and Industrial Company, Hassan, of which the first Respondent is a partner, to the Deputy Commissioner, Hassan District, representing the Government of Mysore was in the nature of a standing contract and there was a subsisting contract between the parties even on the date on which the first Respondent presented his nomination paper and the first Respondent was disqualified for being chosen as a member of the Legislative Assembly under section 7(d) of the Representation of the People Act, 1951. We further hold that the Returning Officer acted improperly in accepting the nomination of the first Respondent. We regret very much we were unable to come to an agreement with the learned Chairman with regard to our finding on this issue. The learned Chairman, for whose opinion we have greatest respect, is of the opinion that there was no subsisting contract between the Firm of the first Respondent and the Government of Mysore on the relevant date i.e. 20th November 1951. For the reasons already stated above, we cannot agree with him in this respect.

18. The alternative issue relates to an admitted fact of the supply of tiles made by the Bharathi Trading and Industrial Company, Hassan, in the year 1950-51, as per their agreement which ended on 31st March 1951 and as such it is unnecessary to deal with the same.

19. The next question for consideration is whether the Bharathi Trading and Industrial Company, Hassan, was transporting food grains in Hassan District in their lorries under a contract for hire entered into with the Deputy Commissioner, Hassan District, since prior to the first Respondent's nomination. The fact that the Company had entered into an agreement with the Deputy Commissioner, Hassan District, to ply their lorries for hire and to transport food grains in the District, has been admitted by the first Respondent himself. P.W. 7, H. S. Krishna Iyengar, clerk in the Food Section of the Deputy Commissioner's Office, Hassan, has produced Exhibit EE, dated 2nd July 1951 addressed by the Bharathi Trading and Industrial Company, to the Deputy Commissioner, Hassan District. Exhibit FF, dated 20th July 1951 is an agreement entered into or executed by the Firm in favour of the Deputy Commissioner, Hassan District, for hiring out its lorries

for transporting food grains within Hassan District. It is the case of the first Respondent that the Firm had approached the Deputy Commissioner, Hassan District, to cancel its agreement for hiring out the lorries for transporting food grains in Hassan District and pleaded their inability and that the Deputy Commissioner had cancelled the agreement from 1st October 1951 and that there was no contractual relationship between the Firm and the Deputy Commissioner, Hassan District, subsequent to that date. Exhibit VII(a) is the order that was passed by the Deputy Commissioner, Hassan District, on 18th September 1951 ordering refund of security of Rs. 1,000 that had been deposited by the Firm at the time of executing Exhibit FF. Exhibit X is the office memo issued by the Deputy Commissioner, Hassan District, on 24th September 1951 to all the Amildars, Rationing Officers and Special Sheristedars, C.R.D. (Central Reserve Depot), Hassan District, requesting them not to entrust any food transport work to the Company from 1st October 1951 as the security amount deposited by the Company had been refunded to the Firm at their request and the contract stood terminated with effect from 1st October 1951. The Petitioner had alleged in his petition that though there was no written contract between the Firm and the Deputy Commissioner, Hassan District, subsequent to 1st October 1951, the Firm was plying its lorries as usual even upto the date on which the first Respondent presented his nomination, for transporting food grains in Hassan District and that there was contractual relationship between the Firm and the Deputy Commissioner, Hassan District. No evidence worth the name has been adduced by the Petitioner to substantiate his case that even after Exhibit X, the lorries of the Firm were being engaged by the Deputy Commissioner, Hassan District, for transporting the food grains. The Petitioner has not even sworn to the fact that the Firm was plying its lorries for hire on the usual terms agreed to between the Deputy Commissioner and the Firm prior to Exhibit X. Hence, no value can be attached to the statement of the Petitioner that the Bharathi Trading and Industrial Company was plying its lorries for hire on the date on which the first Respondent presented his nomination paper. The documentary evidence referred to above makes it clear that the firm had pleaded its inability to ply their lorries for transportation of food grains in Hassan District as per their agreement Exhibit FF and that the Deputy Commissioner had cancelled the agreement from 1st October 1951 on the firm having pleaded its inability to ply its lorries and that there was no subsisting contract between the Firm and the Deputy Commissioner, Hassan District, to hire out its lorries for transporting food grains in Hassan District on the date on which the first Respondent presented his nomination.

20. Issues Nos. 4 to 6 may conveniently be tried together, as in our opinion, the discussion of the evidence adduced in this respect is not of any practical importance or interest. It is the case of the Petitioner that the first Respondent was a Director of the Karnatak Construction Company, Limited, on the date on which he presented his nomination paper and the Company had taken up contracts for the construction of buildings and bridges under the Government of Mysore and the contracts were subsisting on the date on which the first Respondent presented his nomination and on that account the first Respondent was disqualified for being chosen as a member of the Legislative Assembly under section 7(d) of the Representation of the People Act of 1951. The first Respondent on the other hand has been contending that he had ceased to be a Director of the Karnatak Construction Company, Limited, by virtue of Article 97(f) of the Articles of Association on account of his absence from three consecutive meetings of the Directors and from all the meetings of the Directors for a continuous period of more than three months without leave of absence from the Board of Directors long prior to his nomination and as such he had not incurred any disqualification under section 7(d) of the Representation of People Act of 1951. The first Respondent has further stated that he had resigned his Directorship also from 19th November 1951, and the same had been accepted by the Company and on that account also he was not disqualified for being chosen as a member of the Legislative Assembly. The 6th issue relates to whether the first Respondent was a Director holding an office of profit under the Company so as to disqualify him under section 7(d) of the Representation of the People Act. A large volume of evidence has been let in by the parties to substantiate their case with regard to these issues. It was pointed out by one of us, during the course of arguments, that the several contracts referred to by the Petitioner regarding which the evidence had been adduced in the case related to the contracts for the construction of buildings and a bridge under the Government of India or the Southern Railways and that the entire Railway Administration having been taken over by the Government of India on and from 1st April 1951, it cannot be said that there was any contract between the Company and the appropriate Government as defined under section 9 of the Representation of the People Act, so as to disqualify the first Respondent under section 7(d) of the Representation of the People Act. Assuming for the sake of arguments that there

was any such contract subsisting on the date on which the first Respondent presented his nomination paper, the contract was only with the Government of India and the same could not disqualify the first Respondent. The learned advocate for the Petitioner fairly conceded that in view of the fact that the Railway Administration had been taken over by the Government of India on and from 1st April 1951 he could not contend that the first Respondent had incurred any disqualification on account of the Karnatak Construction Company having taken up contracts for the construction of buildings or bridges with the Railway authorities. It was also fairly conceded by him that the first Respondent was not a Director holding an office of profit under the Company. Therefore, assuming for the sake of arguments that the first Respondent was a Director of the Company on the date on which he presented his nomination paper, it does not disqualify him from being chosen as a member unless it was proved that he was a Director holding an office of profit under the Company. In view of the fact that the contracts, if any, for the construction of the Railway buildings or bridges of the Southern Railways, undertaken by the Karnatak Construction Company, were not with the appropriate Government, viz., the Government of Mysore, we feel that it is absolutely unnecessary to discuss the evidence adduced in this behalf any further.

21. The next point for consideration is whether the Government of Mysore had acquired a financial interest in Bharathi Trading and Industrial Company, by having lent a sum of Rs. 50,000 to the same and whether the first Respondent was disqualified for being chosen as a member of the Legislative Assembly under Section 7(e) of the Representation of People Act. The fact that the Firm Bharathi Trading and Industrial Company had borrowed a sum of Rs. 50,000 from the Government and executed a mortgage deed Exhibit S, dated 23rd June 1949 has been admitted by the first Respondent. P.W. 5, Siddalingiah, who has been examined on behalf of the Petitioner has produced Exhibit S and has deposed that the Firm has not yet discharged the debt in full. The question, therefore, for consideration is whether merely because the Firm Bharathi Trading and Industrial Company had borrowed a sum of Rs. 50,000 from the Government of Mysore, mortgaging their assets, the first Respondent who is a partner of the said Firm had incurred any disqualification under Section 7(e) of the Representation of People Act. The learned advocate for the Petitioner was not able to convince us as to how he could contend that the Government of Mysore had acquired any financial interest in the Firm merely because they had advanced a loan of Rs. 50,000 on the mortgage of their assets. In our opinion the Government of Mysore had not acquired any financial interest in the Bharathi Trading and Industrial Company and that the first Respondent was not disqualified for being chosen as a member of the Mysore Legislative Assembly on that account under Section 7(e) of the Representation of People Act of 1951.

22. The next issue relates to the question as to whether the name of the first Respondent had not been entered in the Electoral Roll as a voter and he was not, therefore, entitled to stand as a candidate for the Election, or whether the name "Lakshmappa" as against Serial No. 130, Block 2, Hassan Town Municipality in the Electoral Roll is a printing error for 'Lakkappa' the name of the first Respondent. This objection was raised by the Petitioner and the second Respondent before the Returning Officer. The Returning Officer, who verified the manuscript entry in the original Electoral Roll kept in his office, found that the name of the first Respondent had been correctly entered in the same and that the name 'Lakshmappa' as against Serial No. 130, Block 2, Hassan Town Municipality, related to the first Respondent and it was only a printer's devil. Exhibit XXX is a copy of the manuscript of the Electoral Roll. It is clear from this, that the first Respondent's name is entered as against Serial No. 130, Block 2, Hassan Municipality as 'Lakshmappa' and is only a printing mistake. The name of the first Respondent had been correctly entered in the manuscript as 'Lakkappa', the initials of the first Respondent, his father's name and other particulars having all been correctly entered. Therefore, there is no force in the contention of the Petitioner that the name of the first Respondent had not been entered in the Electoral Roll and that he was not qualified for being chosen as a member of the Legislative Assembly.

23. The next point for consideration is whether the candidates who withdrew their candidature before the Election are necessary parties to the Election Petition. The Petitioner has impleaded only the two Respondents, who are the validly nominated candidates for the Election. The first Respondent has alleged in para. 2 of his written statement that there were other candidates who applied for nomination and whose nomination was accepted, but subsequently withdrew their candidature, and they are necessary parties. The first Respondent has not stated in his written statement that the petition is liable to be rejected on account of the fact that the necessary parties have not been brought on record. Section 82 of the Representation of People Act of 1951 lays down as to who should be arrayed as

parties to the Election Petition. That Section provides that the Petitioner shall join as Respondents to the Petition all the candidates who were duly nominated at the Election. The term "duly nominated candidate" has nowhere been defined in the Act, but it would be deemed to include those whose nominations were held to be proper, in view of the fact that "a validly nominated candidate" has been defined in Clause F of Rule 2 of the Rules framed under the Representation of the People Act of 1951, to mean "a candidate who has been duly nominated and has not withdrawn his candidature in the manner and within the time specified in Sub-section 1 of Section 39 or by that Sub-section read with Section 4 of Section 39, as the case may be." Therefore, under Section 82 of the Representation of the People Act of 1951, the Petitioner was bound to implead all the "duly nominated candidates." Now that the Petitioner has not impleaded all the candidates who were duly nominated as Respondents in this case, whether the petition is liable to be dismissed is a point for consideration. It was contended by the learned advocate for the first Respondent during the course of the arguments that all the duly nominated candidates were necessary parties to this Petition and since they have not been impleaded, the Petition is liable to be rejected summarily. The fact of the filing of the Petition was duly published in the Gazette of 25th February 1952 and the parties were notified to apply for being impleaded as Respondents within a period of 14 days from that date, but none of the duly nominated candidates who had withdrawn their nomination came forward with an application for being impleaded as parties. The question as to whether this Petition is liable to be dismissed summarily for the non-compliance of Section 82 of the Representation of the People Act depends upon as to whether the duly nominated candidates who withdrew their candidature before the Election are necessary parties or proper parties. In our opinion there cannot be any doubt, whatsoever, that they are proper parties but are not necessary parties. Section 85 of the Representation of the People Act which reads as follows:—

"If the provisions of Section 81, Section 83 or Section 117 are not complied with, the Election Commission shall dismiss the petition.....".

This section, therefore, empowers the Election Commission to dismiss a petition summarily if it did not comply with the provisions of Section 81 (presentation of petition), Section 83 (contents of the petition) and Section 117 (deposit of the earnest money). Similar powers have also been conferred on the Tribunal under Section 90(4) of the Representation of the People Act of 1951. If really the provisions of Section 82 of the Act were so imperative as to constitute its non-observance as a ground for dismissal of an Election Petition, it is quite reasonable to expect that the Section should have also been included in Sections 85 and 90(4) of the Representation of the People Act. It is, therefore, not unreasonable to infer that the legislature intended that the effect of non-joinder of parties should be dealt with by the Election Tribunal. It is only when the Tribunal comes to the conclusion that the non-joinder of the parties is fatal, that the Election Petition is liable to be rejected. This question again depends upon the determination of the point as to whether the presence of those parties who have not been impleaded as parties was necessary for the effective trial of the Petition. If our answer to this question is in the affirmative, then the Petition is liable to be dismissed summarily and if the answer is in the negative, then the Petition cannot be and should not be dismissed. In this case, the presence of the duly nominated candidates who withdrew their nominations before the Election commenced is not necessary for an effective trial of this Election Petition. This is a case in which it is quite possible to proceed with the enquiry and decide the contentions involved between the parties without the presence of those candidates. We are of the opinion that the word "shall" in Section 82 is used in a directory sense and the same does not compel the Tribunal to dismiss the Petition summarily. As already stated, none of the parties have come forward with an application even after this petition was published in the Mysore Gazette and were notified to apply for being impleaded as Respondents in the case. In our opinion, as already stated, those candidates are only proper parties and not necessary parties. The Petitioner as a matter of caution has filed an application under Order 1, rule 10, C.P.C. praying for permission to implead all the duly nominated candidates as parties. In the view that we have taken it is unnecessary to implead the other duly nominated candidates who have not been impleaded by the Petitioner in this Petition since their inclusion is not necessary for the trial of this Petition. This is our finding on issue No. 9 raised in the case.

24. The next important point for consideration is—whether the second Respondent had entered into a contract with the Government of Mysore, through his undivided son, Sri. Kantharaj, for the construction of a building for Local Fund Dispensary at Didiga, Channarayapatna Taluk, out of their joint family funds, and on that account was disqualified for being chosen as a member of the Legislative Assembly

and whether the Returning Officer was wrong in accepting his nomination. Issue No. 10 which covers this point and the alternative issue may conveniently be tried together. The Petitioner has alleged in his Petition that Sri Kantharaj son of the second Respondent had entered into a contract with the Government of Mysore for construction of a Local Fund Dispensary at Didiga in Channarayapatna Taluk and on that account the second Respondent was disqualified for being chosen as a member under Section 7(d) of the Representation of the People Act. The second Respondent has stated in his objection statement that it is absolutely false that his son had entered into a contract with the Government of Mysore for the construction of a Local Fund Dispensary at Didiga as alleged in the Petition. It is conceded by the second Respondent that Sri Kantharaj is his undivided son and was constructing a hospital at Didiga, but he has stated that he was constructing the building himself at his own cost without any direct or indirect financial help from the Government with a view to donate the same to the Government of Mysore for purpose of locating a Dispensary therein as a charitable endowment in the name of the grand-father of the second Respondent. The second Respondent who has been examined as R.W. 1 has stated that the Government of Mysore has not contributed anything towards the construction of the building nor has his son Sri Kantharaj entered into any sort of agreement with the Government of Mysore for the construction of the building and that his son Kantharaj has been constructing the building out of the joint family funds as charitable endowment. He has further stated that he deposited a sum of Rs. 3,000 under Charitable Endowment Fund, since the Deputy Commissioner insisted that he should deposit that sum as a security for the fulfilment of his undertaking. Exhibit XXV is an endorsement that has been issued by the Assistant Engineer, Channarayapatna, to the son of the second Respondent. It is stated in Exhibit XXV that the Public Works Department has nothing to do with the construction of the Hospital Building and that it is being constructed by Kantharaj as a charitable endowment. P.W. 6 Ramdoss has stated in the course of his cross-examination that Sri Kantharaj had constructed the Hospital Building at Didiga at his own cost and endowed it to the Government and that the Public Works Department of Mysore had not called for any tenders for the construction of the said building. He has further stated that it is purely an act of charity on the part of Sri Kantharaj and Exhibit XXI(a), dated 31st December 1947 which is a treasury challan clearly shows that the amount of Rs. 3,000 that was deposited by Sri Kantharaj was taken as a "donation" and not as a security deposit from him. He has also stated that some other persons had come forward to construct, wards and kitchen for it and they had given mutchalikas to that effect and had constructed those buildings. It is, therefore, clear from the evidence of the second Respondent and P.W. 6 that the second Respondent's son had constructed the hospital building at Didiga out of his own funds and there was no sort of contractual relationship between the Government of Mysore and Sri Kantharaj with regard to the construction of the building. Therefore, our finding on issue No. 10 is that the second Respondent was not disqualified for being chosen as a member of the Mysore Legislative Assembly under Section 7(d) of the Representation of the people Act. The second Respondent's son Kantharajagowda had not entered into any sort of agreement or contract with the Government of Mysore, for the construction of the building and the same was constructed by Kantharajagowda out of his own funds or family funds as a charitable endowment in the name of the second Respondent's grand-father. This is our finding on the alternative issue.

25. It is alleged by the Petitioner in his petition that 39 ballot boxes in which his votes had been cast, had been tampered with before the counting of votes took place and that the ballot boxes had been opened in the presence of the brothers of the first Respondent on a Sunday, i.e. on 20th January 1952, and as such the result of the Election has been materially affected. The Petitioner has examined two witnesses to prove the fact that the strong room or the lock-up in which the ballot boxes had been deposited for safe custody after the Election was over, had been opened on the 20th January 1952 which happened to be a Sunday and that the brothers of the first Respondent were present at the time. This fact that the lock-up had been opened on the 20th January 1952 as alleged by the Petitioner has been admitted by the Returning Officer who has been examined as P.W. 4 in the case in his report Exhibit M. It is a copy of the report that P.W. 4 submitted to the Government on a complaint that was made by the Petitioner in writing to the Electoral Officer. It is clear from Exhibit M that the Amildar had opened the strong room or the lock-up in which the ballot boxes were kept, on 20th January 1952. It is stated by P.W. 4 that his enquiry disclosed that the Amildar had opened the lock-up to fasten the windows. If really the ballot boxes had been actually tampered with as alleged by the Petitioner, one could expect the Petitioner and his Agent, P.W. 1 Kirianniah, who were admittedly present at the time of the counting of the votes, to have lodged a complaint in writing. The fact that they have not done so clearly indicates that the allegation made by them that the

39 ballot boxes had been tampered with is only an afterthought. Nothing prevented the Petitioner and his Agent to have protested even before the counting of the votes commenced and requested the Returning Officer to record his objection. The Petitioner presented a Petition only after the Returning Officer counted all the votes and declared the first Respondent as a duly elected candidate and the same lacks bonafide. We only wish to remark that the Returning Officer or the Assistant Returning Officer should have sent for P.W. 1 who was the Agent of the Petitioner and who was residing at Channarayapatna before opening the lock-up and thus avoided all these charges. Our finding on issue No. 11 raised in the case is that the Petitioner has not established by clear evidence that the 39 ballot boxes in which his votes had been cast had been tampered with before the counting of the votes had commenced.

26. The first Respondent has stated in his written statement that the Election Petition is liable to be dismissed summarily for non-payment of court fee thereon. But he never tried to support his contention by producing any authority for his proposition that the Election Petition was liable to be dismissed for non-payment of the court fee. What court fee is to be paid on an Election Petition has not been stated anywhere in the Representation of the People Act. It has not been stated in Section 85 of the Act that an application which has not been stamped or on which the court fee has not been paid is liable to be rejected summarily. As already stated, except making a bare allegation in the written statement, the first Respondent has not tried to establish his contention that the Petition is liable to be rejected, for non-payment of the court fee. Therefore, our finding on issue No. 13 raised in the case is that the Petitioner is not liable to pay any court fee on the Election Petition and the same is not liable to be dismissed for non-payment of the same.

27. The next and the most important point for consideration is whether the result of the Election has been materially affected by the improper acceptance of the nomination papers of the Respondents 1 and 2. We have already held that the Returning Officer acted improperly in accepting the nomination paper of the first Respondent and that he was disqualified for being chosen as a member to the Mysore Legislative Assembly under Section 7(d) of the Representation of People Act. We have also held that the Returning Officer was perfectly justified in rejecting the objection raised by the Petitioner and accepting the nomination paper of the second Respondent. Section 100(1)(c) of the Representation of People Act of 1951 lays down that if the Tribunal is of the opinion that the result of the Election has been materially affected by the improper acceptance or rejection of any nomination, the Tribunal shall declare the election to be wholly void. It is, therefore, necessary that we should form an opinion that the result of the present election has been materially affected before we can treat the improper acceptance of the nomination paper of the first Respondent as a ground for setting aside the Election in this case. We can find a number of authorities for the proposition that if a nomination paper of a candidate was improperly rejected it will follow invariably that the result of the Election has been materially affected, but it is not so in a case wherein a nomination paper has been improperly accepted by the Returning Officer, for the Electorate had not been deprived to vote for him. The ground on which the rule of law, that an improper rejection of a nomination invariably means that the result of an Election has been materially affected, has been founded on the ground that the electorate had been deprived the right to vote for the candidate of their choice since the nomination of a particular candidate had been rejected. In a case like the one on hand, where the nomination paper of a candidate has been improperly accepted and that the petitioner contends that the result of the Election was materially affected by the improper acceptance of the nomination, the burden of proving that the result has been materially affected is on the Petitioner. In this case, it is contended for the Petitioner that the result of the Election would have been different if the first Respondent's nomination had not been accepted by the Returning Officer. The first Respondent has been elected from the Channarayapatna Constituency to the Mysore Legislative Assembly. In our opinion there cannot be any doubt, whatsoever, that the result of the Election has been materially affected, for if the nomination paper of the first Respondent was rejected, one of the Respondents or any one of the other duly nominated candidates who withdrew their nominations subsequent to the acceptance of the nomination paper of the first Respondent, if all or any one of them had contested the Election, would have been elected but not the first Respondent. The fact that the first Respondent, who was disqualified under Section 7(d) of the Representation of the People Act, was allowed by the Returning Officer to contest the Election and that he has been duly declared elected by getting the highest number of votes in the poll, clearly indicates that the result of the Election has been materially affected. In our opinion, this is a thing that speaks for itself—"Res ipsa loquitur". To require the Petitioner to prove that the result of the Election has been materially

affected or would have been different by adducing evidence in this case is to ask the Petitioner to do an impossible thing. It is a condition which is incapable of fulfilment and the law does not compel a man to do that which he could not possibly do or perform. If the first Respondent had not been elected and any other candidate had been elected instead, and if the Petitioner had contended that the result of the Election was materially affected by the improper acceptance of the nomination paper of the first Respondent, then it was necessary to adduce evidence to prove that the improper acceptance of the nomination paper of the first Respondent has materially affected the result of the Election. But in this case, as already stated, the first Respondent, who was disqualified and whose nomination paper was accepted by the Returning Officer, improperly has been elected. Therefore, our finding on issue No. 12 is that the result of the Election for Channarayapatna Constituency has been materially affected by the improper acceptance of the nomination of the first Respondent.

28. *The Relief*.—This must follow as a matter of course. We have held that the Returning Officer acted improperly in accepting the nomination of the first Respondent and that the first Respondent was disqualified for being chosen as a member of the Mysore Legislative Assembly under Section 7(d) of the Representation of the People Act of 1951. We have also held that the improper acceptance of the nomination paper of the first Respondent has materially affected the result of the case. In the result, therefore, the Election of the first Respondent to the Mysore Legislative Assembly from the Channarayapatna Constituency is liable to be set aside and the election declared wholly void under Section 98 read with Section 100(1)(c) of the Representation of the People Act of 1951. In the circumstances of the case we are of the opinion that the parties should be directed to bear their own costs.

Pronounced in open court on 24th February 1953.

(Sd.) H. HOMBE GOWDA, *Member*.

(Sd.) MIR IQBAL HUSSIN, *Member*.

By Chairman:—

The parties were candidates for election to the State Legislative Assembly from Chennarayapatna Constituency. The petitioner was nominee of K.M.P. Party, the first respondent Congress nominee and second respondent an independent candidate. The election was held on 16th January 1952 and the results were announced on 27th January 1952, soon after the counting of votes, by the Returning Officer P.W. 4, Sri M. Narayana Murthy, Revenue Sub-Division Officer of Hassan, declaring the first respondent as duly elected as having secured majority of votes. The first respondent filed his nomination paper, Exhibit F, before the Returning Officer on 21st November 1951, the last date fixed for receiving nominations. On 19th November 1951, the second respondent presented his nomination paper, Exhibit D. At the time of scrutiny on 23rd November 1951, the petitioner filed his objections to the nomination of respondents 1 and 2. After some enquiry, the Returning Officer accepted the nominations of the first and second respondents, overruling all the objections of the petitioner.

2. Under Section 81 of the Representation of the People Act, 1951, the petitioner has brought this election petition, challenging the acceptance of the nominations of respondents 1 and 2 as illegal and having materially affected the results of the election. The pleadings in this case run over several pages. Hence I propose to set out the main points at issue between the parties.

3. The Bharath Trading and Industrial Company, Hassan, (hereinafter referred to as Bharath Company for the sake of brevity) is a firm registered under the Mysore Partnership Act. It manufactures tiles and building accessories in timber and deals with them. The first respondent is one of the partners of the firm. On 20th September 1950, the firm preferred a tender to the Deputy Commissioner, Hassan District, in response to his tender notification for 1950-51 for supply of Mangalore flat and ridge tiles, meant to improve the housing conditions of depressed classes. The tender was accepted by the Deputy Commissioner, Hassan District on 4th November 1950, resulting in a contract.

4. On 8th September 1951, the Deputy Commissioner placed an order with the firm for supply of 8000 flat and 200 ridge tiles to Amildar, Belur Taluk for reconstruction of houses of members of depressed classes in Sulagalala village and the firm carried out the order. According to petitioner, the said contract has not been terminated either by the Deputy Commissioner *suo moto* or at the instance of the firm and it is continuing and the supply of tiles as per order of date

September 8, 1951, must have been made in relation to it, there having been no fresh contract in that connection, and as the first respondent, in his capacity as partner of the firm, has an interest in this contract which is one for supply of goods to the appropriate authority (Government of Mysore) represented by the Deputy Commissioner he had stood disqualified for being chosen as a member of the Assembly under Clause (d) of Section 7 of the Representation of the People Act, 1951.

5. Again according to the petitioner, the Bharath Company has been plying their lorries for hire, transporting food grains for the Government of Mysore, since long prior to the date of the nomination of the first respondent, under a hire agreement between the company and the Deputy Commissioner, Hassan, and thus also the first respondent was disqualified for being a candidate for election to the State Assembly under Clause (d) of Section 7 of the Act.

6. The Karnatak Construction Company, Limited, Davanagere, is a firm registered under the Mysore Companies Act on 16th March 1946, engaged in the execution of contracts for construction of buildings and other allied contracts. The first respondent was co-opted as a Director of the firm at its inception. Petitioner makes it appear that the firm has entered into three building contracts with the appropriate authority several months prior to the nomination of the first respondent and these are still subsisting and hence the first respondent was disqualified for being a candidate for the Assembly Election, being a Director of the firm (Note:— The provision of law under which he is alleged to have incurred this disqualification is not specified in the election petition).

7. The first respondent was Chairman of the Rural Development Committee for Hassan District, appointed by the Government of Mysore, on a remuneration of Rs. 100 per month from 20th February 1950 up to 1st August 1952 when that Committee was abolished. Petitioner's contention is that, as he was a holder of this office of profit on the date of his nomination, he had incurred disqualification for being a candidate. In his election petition, he makes pointed reference to the Mysore Ordinance No. IV of 1951, amending the Mysore Legislature (Prevention of Disqualification) Act of 1951, exempting certain holders of Office of Profit from disqualification for being candidates at the Assembly election, as being *ultra vires* of the Constitution and hence he maintains that his candidature is void.

8. In the concerned printed electoral roll pertaining to block II of Hassan Town Municipality, as against serial number 130, the voter's name is mentioned as Lakshmappa. At the scrutiny of nominations, the Returning Officer P.W. 4 was of the view that that entry related to Lakkappa, the first respondent as 'Lakshmappa' was a printing error for 'Lakkappa'. It is urged by the petitioner that his decision was wrong as the entry could not possibly relate to the first respondent.

9. The petitioner also contends that the appropriate authority has also acquired a financial interest in the Bharath Company on account of the Company having borrowed Rs. 50,000 from the Government of Mysore.

10. The second respondent and his son Sri Kantharaja Gowda, are members of a joint Hindu family of which the former is the manager. Petitioner avers that the second respondent has entered into a contract with the Government of Mysore through his son for construction of a Local Fund Dispensary at Didiga, Chennarayapatna Taluk, out of their joint family funds and thus the nomination of the second respondent came also within the purview of Clause (d) of Section 7 of the Act.

11. All the ballot boxes pertaining to this election, were kept in the Police Lock-up, Chennarayapatna for safe custody. Petitioner suspects that these boxes must have been tampered with and votes polled by him meddled with, at the instance of the first respondent, as he came to know that the Lock-up was opened on 18th and 19th January 1952, and on 20th January 1952 in the presence of the first respondent's brothers who worked for him at the election. Petitioner purports to have found at the counting of votes that the seals and signatures of his agents placed on about 39 ballot boxes of his on the date of election had been tampered with, with the result that the mandatory provisions relating to preservation of ballot boxes before counting, had been transgressed.

12. On all these grounds, the petitioner has prayed that, after holding that the election of the first respondent is void, it may be declared that he is duly elected in his stead, or that the whole election is void.

13. The first respondent has tried to meet the petitioner's objections to his nomination *seriatim*. The first respondent admits the said contract of 4th

November 1950 for the supply of tiles but pleads that it was for the year 1950-51 and accordingly it ceased on 31st March 1951, and further pleads that, after 8th September 1951, purchases of tiles were made by the Taluk Authorities in Hassan District from the Bharath Company, just like other customers, without any relation to the said contract. As regards the lorry hire agreement aforesaid, his plea is that it was terminated by the concerned authority in September 1951 itself at the instance of the Bharath Company which pleaded inability to transport food grains any longer. As regards the contracts entered into by the Karnatak Construction Company with the Government of Mysore, he pleads that he was not disqualified for being a candidate under Clause (d) of Section 7 of the Act as the contracts were not subsisting on the date of his nomination, as his Directorship of the Company itself ceased under Clause (f) of Article 97 of the Articles of Association of the Company, he having failed to attend not only three consecutive meetings of the Board of Directors but all the meetings of the Board of Directors for a continuous period of three months, and as he further resigned his Directorship on 19th November 1951 and the resignation was accepted on that date. Apart from all these, as having been only a Director not holding an office of profit, he invokes the aid of Sub-Clause (d) of Clause (1) of Section 8, embodying one of the exceptions to Clause (d) of Section 7 of the Act.

14. The first respondent denies that the Government of Mysore had secured any financial interest in the Bharath Company by its advance of a loan of Rs. 50,000 to it.

15. The first respondent points out that he did not get the entry in the electoral roll relating to him, rectified by having his name 'Lakkappa' substituted for 'Lakshmappa' as his name was correctly entered in the original electoral roll.

16. There were some four other candidates who were duly nominated as candidates for the election but who withdrew their candidature within the time prescribed. The first respondent urges that the election petition is liable to be dismissed as they have not been impleaded as parties to it though they were necessary parties to it.

17. The first respondent has put the petitioner to strict proof of his allegations about the infringement of the provisions relating to safe custody of ballot boxes, having at first denied any such infringement.

18. The first respondent has prayed for dismissal of the election petition for non-payment of court fee thereon as specified in Article 22 Schedule II of the Court Fees Act.

19. In a supplemental statement, the first respondent has relied on a notification said to have been issued by the Government of Mysore, preventing disqualification for his being a candidate, arising out of his office as Chairman of Rural Development Committee. He does not give details about this notification.

20. As per the second respondent's objection statement, the construction of the Local Fund Dispensary at Didiga was completed by his undivided son, Sri Kantharaja Gowda at his own cost as a charitable endowment in the name of the grandfather of the second respondent and hence there was no improper acceptance of his nomination paper.

21. In his reply to first respondent's objection statement, petitioner has mentioned *inter alia* that his objection as to non-joinder of candidates who have withdrawn, as respondents to his election petition, is opposed to Section 82 of the Representation of the People Act, 1951.

22. This case turns on some tough points of law. Sri V. Krishna Murthy, Advocate for the petitioner, contends that, as admittedly the first respondent was Chairman of the Rural Development Committee, Hassan District in receipt of a remuneration of Rs. 100 per mensem on the date of his nomination, under the appropriate authority and as there is no enactment passed by the State Legislature prior to his nomination, exempting him as holder of this office of profit under the appropriate authority from disqualification for being a candidate, he was disqualified as such. Sri G. R. Ethirajulu Naidu, Advocate for the first respondent, contends that there has been a due Legislative enactment in the State, exempting Chairman of such Committee from such disqualification. Part VI of the Constitution of India applies to States in Part A of the First Schedule. Article 238 in Part VII enables the applicability of the provisions in Part VI to States in Part B of the First Schedule, including Mysore, with certain modifications and omissions as detailed therein. Article 238 leaves Articles 173 and 191 in Part VI as they

stand, and hence these two provisions will have to be applied as they are, to Mysore. Article 173 prescribes positive qualifications required of a candidate for election to the State Legislatures, the Legislative Council and Legislative Assembly. On the other hand, Article 191 gives out the qualifications for such candidates in a negative way. Article 191(1)(a) reads thus:—

“A person shall be disqualified for being chosen to and for being a member of the Legislative Assembly or Legislative Council of a State:

If he holds an office of profit under Government of India or the Government of any State specified in the First Schedule other than an office declared by the Legislature of the State by law not to disqualify its holder.”

Under Clause 2 of Article 191, a Minister of Indian Union or the Minister of a State specified in the First Schedule shall not be deemed to be a holder of office of profit under the Government of India or the Government of the State. The term ‘office of profit’ occurs in some other Articles of the Constitution also. These are Articles 58(2), 59(2), 64, 66(4), and 102(1)(a). To style an office as an office of profit, it must first be an office which means an ‘employment’ with ‘fees and emoluments thereunto belonging’ (Blackstone) Profit has always been used in a very wide sense without being confined to only a pecuniary one. It may be even a reward, perquisite or some other advantage (*Vide* May, Parliamentary Practice). The present case is a strong one as the emolument was drawn by the holder from time to time during his tenure of office from February 20, 1950 to 1st August 1952 as disclosed by entries in Exhibit T, the Acquittance Roll maintained for the Rural Development Committee and its staff in the Office of the Deputy Commissioner, Hassan. That apart, a Van was placed at his disposal by the Government of Mysore during the period of his office, the Government having borne its running expenses (*Vide* evidence of P.W. 6 Sri B. R. Ramadoss, Clerk of the Deputy Commissioner's Office). This is a perquisite attached to his Office as Chairman.

23. The fact that the first respondent was being paid as Chairman of the Committee only a small remuneration of Rs. 100 per mensem, in the nature of a honorarium, is no ground for holding that it is not an office of profit, as, even when a holder of an office of profit, renounces his emoluments voluntarily, it shall continue to be such an office (*Vide* Reade Vs. Brearley, 17 T.C. 687).

24. The first respondent's office thus carried with it not only cash emoluments but also perquisite and hence it is clearly an office of profit. This is my finding on the first issue.

25. Sri G. R. Ethirajulu Naidu relies on the Mysore Legislature (Prevention of Disqualification) Act, 1951 (Act No. XXV of 1951) and argues that, as, under it, among others, Chairman of any Committee appointed by Government, has been declared not to be disqualified for being chosen as and for being member of the State Legislature by virtue of his holding such office of profit, the first respondent who was such office-bearer stood so exempted from such disqualification. This Act came into force on 23rd June 1951. The schedule appended to the Act specifies the holders of office of profit who were so exempted. It reads thus:—

SCHEDULE

1. Parliamentary Secretaries.

2. Chairman, Director or Member of any Committee of Board appointed by Government.

The said schedule was amended with the addition of item No. 3 thereto, making mention of Member of Industrial Tribunal constituted by the State Government under the Industrial Disputes Act—by the Mysore Legislature (Prevention of Disqualification) (Amendment) Ordinance 1951, passed by His Highness the Rajpramukh of Mysore on the 5th day of July 1951. It is Mysore Ordinance No. II of 1951. Under Mysore Ordinance IV of 1951 styled as the Mysore Legislature (Prevention of Disqualification) (Second amendment) Ordinance of 1951, passed on 17th day of November 1951, for item No. 2 in the schedule to Act XXV of 1951, the following was substituted:

“2. Chairman Director or Member of any Committee, Board or Council appointed by the Government of India or by the Government of Mysore or any other State specified in the First Schedule to the Constitution of India.”

Thereafter under Mysore Act No. XII of 1952 (The Mysore Legislature) (Prevention of Disqualification) (Amendment) Act, 1952, which was passed on 30th day of March 1952, the Mysore Ordinance No. IV of 1951 was repealed and amendment of item No. 2 in the schedule in Act No. XXV of 1951 as made by that Ordinance was retained.

26. Sri V. Krishna Murthy contends that Mysore Act XXV of 1951 is defective as it does not specify the Government, the appointing authority of Chairman of any Committee against item No. 2 in the schedule thereof. He urges as to Mysore Ordinance No. IV of 1951 that the emergency which led to the measure has not been mentioned in it and as such, it cannot be acted upon and as to Act No. XII of 1952, that it could not be of any avail to the first respondent as it was passed long after the election. I have gone through these various measures and I am of opinion that the first respondent's case comes clearly within the ambit of Mysore Act No. XXV of 1951, he having been then a Chairman of the Rural Development Committee appointed by Government. The term 'Government' occurring in the schedule to the Act is synonymous with Government of Mysore as under Clause 16 of Section 3 of General Clauses Act, Act No. III of 1899 as in force in Mysore, 'Government' or 'the Government' or 'the Government of Mysore' shall mean the person authorised to administer executive Government in Mysore. Hence the term 'Government' in the said schedule can mean no other Government except the Government of Mysore. I do not therefore feel it necessary to consider the contentions raised by Sri V. Krishna Murthy as to Mysore Ordinance No. IV of 1951 and Mysore Act No. XII of 1952.

27. The first respondent was wrong in having pleaded in his supplemental statement that there was a notification by the Government of Mysore, exempting him from disqualification for being a candidate, on account of this office. It was indeed the Mysore Act No. XXV of 1951, passed in conformity with Article 191(1)(a) read with Article 238 of the Constitution of India, that gave him the exemption and this is my finding on the alternate first issue.

28. By far the most important piece of argument advanced by Sri V. Krishna Murthy is that the eligibility of a candidate is to be judged with reference to the commencement of his prospective candidature and not to the date of his nomination and if so viewed, the first respondent stood disqualified as a candidate in several respects. Sri G. R. Ethirajulu Naidu opposes and argues that it is to be decided with reference to the date of his nomination only. In the Representation of the People Act, 1951, the term candidate has been defined thus at Section 79(b) Part VI:—

'Candidate' means a person who has been or claims to have been duly nominated as a candidate at any election, and any such person shall be deemed to have been a candidate, as from the time when with the election in prospect, he began to hold himself out as a prospective candidate'

In the opening line of that section, it is clearly laid down that, in this part (Part VI) and in Parts VII and VIII, the definition of that term along with others therein shall be adopted unless the context otherwise requires. Part VI deals with disputes regarding elections, Part VII with corrupt and illegal practices and electoral offences and Part VIII with disqualifications arising out of commission of corrupt and illegal practices and failure to lodge the return of election expenses and convictions for electoral offences, etc. Only the latter part of the definition of the term as to prospective candidate is now relevant and considering the context in which it appears as detailed *supra*, it cannot be co-related to Section 7 in Part I of the Act, dealing with disqualifications for being chosen as candidate and being a member of Parliament or State Legislature. The Election Courts in England have often found, from materials on record, when the prospective candidature commenced for the purpose of ascertaining the items of expenditure that should find a place in the return of election expenses, that is, those expenses "in connection with or incidental to the election". It may be tersely put that prospective candidature of a person commences from the point of time when he begins to institute a canvass of the constituency with the object of being elected and his election expenses commence when he incurs expenditure to achieve that object. There is no point of time fixed by statute for commencement of election expenses either in England or in India. By long course of decisions in England, it is well recognised that all expenses incurred in "the conduct or management of election" from the commencement of candidature, either prospective or otherwise, are to be mentioned as such in the return. *Cave J. in Rochester Case (1892) 4 O.M. & H. 156*, has indicated in the following passage that a candidate has to specify in his return the expenses incurred by him on his election campaign even during his prospective candidature. "In some cases canvassers are set to work and Committees are formed

long before the dissolution or the issue of the writ. If those expenses are not to be returned as election expenses, the words of the Act as to the maximum amount of expenditure are set at naught". A prospective candidate may be also responsible for a corrupt practice committed before the dissolution (Vide Norwich 1886, 4 O.M. H. 85). The prospective candidature has thus a direct bearing on the return of election expenses and commission of corrupt practices—in England. The position is the same in India, considering the context in which the definition of Prospective candidate in the Representation of the People Act, 1951, appears.

29. The learned Election Commissioners in some Provinces in India at the former elections have held that, on the date of nomination, the candidate must be qualified for election. In II Jagat Narain's Indian Election Petitions Page 123 (Bengal Legislative Council Presidency Division Landholders, Maharaja Sir Manindra Chandra Nandy Vs. Hon'ble Mr. Pravash Chandra Mitter) the last date for filing of nomination papers for election to the Bengal Legislative Council was 8th October 1923. The petitioner who was a member of the Council of State resigned his seat there by a telegram and a letter addressed to His Excellency the Viceroy on 7th October 1923. The telegram reached His Excellency that very day. On October 8, the petitioner filed three nomination papers before the Returning Officer. It was only on October 10, His Excellency accepted his resignation from the Council of State. On October 11, at the scrutiny, the respondent objected to his nomination on the ground that, on its date (8th October 1923) the petitioner was not eligible for election to the Legislative Council as he then continued to be a member of the Council of State. Rule 5(1)(c) of the Electoral Rules has declared that a person is not eligible for election to the Legislative Council if he be a member of any other Legislative body. The Returning Officer upheld his contention and rejected his nomination papers. The learned Election Commissioners have decided that the date with reference to which the question of eligibility of a candidate is to be determined is the date of his nomination and that, on that date, the petitioner was not qualified for election on account of his continuance in the Council of State as member. In II Jagat Narain's Indian Election Petitions Page 31, Bombay Legislative Council, Belgaum District (N.M.R.) (Karale Vs. Dalvai and Angadi), it has been held that no disqualification for being chosen as a member of the Legislative Council should exist in a candidate on the date of his nomination. The facts of this case bearing on this point, are also similar to the facts of the other case. In II Jagat Narain's Indian Election Petitions Page 83, Assam Legislative Council, Golaghat Case (N.M.R.) (Srijut Tara Prasad Vs. Rai Bahadur Devi Charan Baruah) the respondent objected to the nomination of the petitioner at the time of scrutiny *inter alia* on the ground that he was under 25 years of age. The Returning Officer did not hold any enquiry about the age but took his age to be 25 years as found in the electoral roll. On evidence, the learned Election Commissioners found that he was over 25 years of age at the time of his nomination. The learned Election Commissioners have thus taken the date of his nomination as the date on which he must be found eligible as a candidate for election on the ground of age.

30. In Harford Vs. Linskey (1899) 1 Queen's Bench 852, a Municipal election case, the learned Judge has been of the view that it is to be ascertained whether, on the date of his nomination, the petitioner was qualified to stand as a candidate. Wright J. has observed thus at page 858:—

'In the absence of any guide, we think it safest to hold that in case of elections under the Municipal Corporations Act, a person, who at the time of nomination is disqualified for election in the manner in which the petitioner was disqualified, is also disqualified for nomination. The nomination is for this purpose an essential part of the election, and if there are no competitors, it of itself constitutes the election by virtue of the express words of Section 56. It is Section 56 of the Municipal Corporations Act, 1882.'

31. Hence all these authorities are clear on the point that, on the date of his nomination, a person must be qualified for being chosen as a candidate for election.

The opening lines of Section 7 of the Representation of the People Act, 1951 read thus:—

"A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State....."

These lines clearly indicate that it is to be seen whether the candidate was disqualified for being chosen as a member of Parliament or the State Legislature as on the date of his nomination.

In the election petition, the petitioner himself has sought to make it appear that the first respondent was disqualified for being a candidate on the date of his nomination, throughout. I do not know why his counsel, Sri V. Krishna Murthy, who drafted the petition, having thus taken the correct stand on the point, departed from it at the stage of argument. Hence the petitioner has to make out whether the first respondent was disqualified for being a candidate for the Assembly election in dispute on the date of his nomination, on the several grounds set out in the election petition.

32. Now turning to the alleged disqualification of the first respondent, the relevant provision is Section 7(d) of the Representation of the People Act, 1951. It reads thus:—

"A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State—

If, whether by himself or by any person or body of persons in trust for him or for his benefit or on his account, he has any share or interest in a contract for the supply of goods to, or for the execution of any works or the performance of any services undertaken by, the appropriate Government."

I shall now refer to the lorry hire agreement the Bharath Company entered into with the Deputy Commissioner, Hassan District on behalf of the Government of Mysore—Exhibit FF, dated 20th July 1951. In that agreement, the Bharath Company undertook to ply four of its lorries for hire for transporting food grains and other controlled commodities on behalf of the Food Department in the District between places which it specified for a period of one year from 1st April 1951 or until such time the agreement is rescinded by the Deputy Commissioner. It is a contract for the performance of service undertaken by the appropriate authority. This agreement along with other connected papers got exhibited for the petitioner, was produced by P.W. 7, Sri H. S. Krishna Iyengar, Clerk, Food Section, Deputy Commissioner's Office, Hassan. Exhibit FF came into existence on a tender made by the company in response to a tender notification, dated 13th February 1951, issued by the Deputy Commissioner. The Bharath Company also credited a sum of Rs. 1,000 in the Savings Bank Pass Book issued to it by the District Treasury Officer, Hassan, as security for the fulfilment of the agreement and handed over the pass book along with the tender. The firm transported food grains during the months of July and August 1951, but on the 15th of September 1951 it thought fit to obtain a refund of the security deposit and thereby got the contract terminated on the ground that they were not transporting food grains in their lorries then (Vide Exhibit VI, its letter to the Deputy Commissioner). Two days hence on 17th September 1951, not only this was followed by a reminder, Exhibit VII, but also with Exhibit GG, their bill for hire, loading and unloading charges in respect of transport of food grains, during July and August 1951 to the tune of Rs. 1,057-8-3. In the first instance, the Deputy Commissioner passed an order that very day that the deposit might be refunded and the transport charges might be paid after audit. But subsequently, on 25th September 1951, he passed the bill, Exhibit GG, on an office note for Rs. 958-6-0. Rs. 900 to be paid to the firm immediately and Rs. 58-6-0 after audit of accounts, as per Exhibit HH(1) on the reverse of Exhibit HH, covering letter for Exhibit GG. On 25th September 1951, the firm was paid Rs. 900 through its clerk Sri K. S. Chikkanna Gowda as endorsed by him on the reverse of Exhibit GG, he having obtained the return of the pass book on the date of Exhibit VII itself as per his endorsement, Exhibit VII(b). On 25th September 1951, the Deputy Commissioner issued a circular letter as per the original of Exhibit X to the Amildars and other officers concerned in the District not to entrust food transport work to the Bharath Company as the contract was terminated with effect from 1st October 1951, as the firm found it unable to carry on the contract any further. I have only to see whether the contract continued to subsist on the date of nomination of the first respondent. The Deputy Commissioner himself made it manifest in unequivocal terms in the original of Exhibit X that it had been terminated with effect from 1st October 1951 long prior to the nomination of the first respondent. Hence he did not stand disqualified for being a candidate on this contract. This is my finding on the alternate third issue.

33. The Bharath Company applied to the Director of Industries and Commerce for a loan of Rs. 50,000 on the security of its assets, movable and immovable for the development of its Tile Factory on 6th August 1948, by means of an application in the prescribed form, Exhibit P. On the recommendation of the Director of Industries and Commerce, the loan was sanctioned by Government on 13th June 1949 in their order No. D8766-9/I. & C. 344-48-3, Exhibit Q.

Under Exhibit Q, the Government insisted that the personal security of the promoters of the concern also should be obtained for repayment of the loan. All the partners of the concern on its behalf, executed Exhibit S, deed of mortgage in favour of the Director of Industries and Commerce on behalf of the Government of Mysore on 23rd June 1949 for the said amount, in accordance with the directions conveyed in Exhibit Q. P.W. 5 Sri Siddalingiah, Clerk of the Office of the Director of Industries and Commerce has spoken to the fact that about Rs. 23,128 odd is still due under Exhibit S. Simply because the Government of Mysore has advanced the loan in furtherance of an expansion scheme undertaken by this industrial concern, it cannot be said by any stretch of imagination that the Government had acquired a financial interest in the company. I find on the 7th issue accordingly. The petitioner's counsel, Sri V. Krishna Murthy, is also now of this view and he does not press the contention on this point.

34. Much documentary evidence has been led on the supply of tiles by the Bharath Company to different Taluks in the Hassan District for betterment of the housing conditions of members of the depressed class. Exhibit U is a tender notification, dated 24th August 1950, issued by the Deputy Commissioner of the District, inviting tenders for supply of Mangalore flat and ridge tiles for the purpose for the year 1950-51. In response to it, the Bharath Company preferred to the Deputy Commissioner its tender, Exhibit W, dated 20th September 1950, giving quotations for flat tiles of first and second quality and ridge tiles along with the challan for deposit of a cheque for Rs. 250 as earnest, Exhibit Y. This tender was accepted by the Deputy Commissioner on 4th November 1950, as per his letter to the concern, Exhibit Z. No doubt, by the acceptance of the tender, a contract for supply of tiles came into existence on that date and supplies were made. There had been also some supplies of tiles made by the company to some Taluks in the District subsequent to June 1951. It is contended by the petitioner's counsel, Sri V. Krishna Murthy that the contract of 4th November 1950 is continuing and it is in pursuance of that contract, those supplies must have been made or in the alternative, there has been a contract in respect of each such supply of tiles subsisting till the ascertainment of the price thereof. He has also argued that many of these supplies were made during the prospective candidature of the first respondent. Thus he has tried to show that he was disqualified as a candidate under Clause (d) of Section 7 of the Representation of the People Act, 1951. On the other hand, the contention of the first respondent's counsel is that the said contract terminated at the close of the year 1950-51 in conformity with the tender notification, Exhibit U, and that the supplies subsequent to June 1951, were made by the Company under different set of circumstances to those Taluks just in the same way as it is selling tiles to other customers. P.W. 6 Sri B. R. Ramadoss is not able to lay his hands in the file of papers he had produced from the Deputy Commissioner's Office on the final bill said to have been presented by the Bharath Company for supplies of tiles made under the contract of 4th November 1950, on 30th March 1951 as pleaded by the first respondent. Exhibit XV is the Cash Register maintained in the Deputy Commissioner's Office in relation to the Depressed Class Amelioration Fund. Exhibit XV(a) is an entry dated 16th June 1951, showing that a sum of Rs. 7,781-6-0 being the cost of tiles, Rs. 359-15-0, transport charges and Rs. 45 loading charges were paid to the Bharath Company. It has been pleaded in the objection statement of the first respondent that the concern obtained payment for supply of tiles under that contract on 16th June 1951. There is nothing also on record to show that there was any supply made by it to any Taluk in the District between 31st March 1951 and 16th June 1951. Hence this payment must necessarily relate to the supplies under that contract. It has also obtained a refund of the earnest of Rs. 250 made along with Exhibit W, through its clerk, Sri K. S. Chikkanna Gowda on 15th November 1951, as per his voucher, Exhibit XII(a) on the reverse of the order made by the Deputy Commissioner for refund that very day on its refund application, dated 14th November 1951, Exhibit XII, on the ground that the contract has been terminated. But it is contended for the petitioner that, though the earnest was refunded, the contract continued. This is a position which cannot be maintained for a moment as the tender itself was only for 1950-51 and even the payment for the supplies was made on 16th June 1951 and as the earnest would not have been refunded if the contract was meant to be continued even after the close of the official year 1950-51. My finding on the alternate second issue is in the affirmative.

35. The Commissioner for Rural Development and Depressed Classes, Mysore, Bangalore, issued a tender notification, Exhibit XXVII, on 23rd March 1951, calling for tenders for Mangalore flat and ridge tiles for the amelioration of the housing condition of the Depressed Classes in the entire State for the year 1951-52.

Among the tenders submitted was tender made by Sri Rama Tiles and Timber Mart, Hassan, Exhibit XXVIII, on 21st April 1951. It is in the evidence of R.W. 2 for the first respondent, Sri M. Hanumanthappa, Clerk in the Office of the Commissioner, that the Bharath Company did not submit any tender in response to Exhibit XXVII. He has stated so with reference to the entire file of papers he had brought relating to this tender notification. The Commissioner accepted the tender of the Mart, for flat and ridge tiles for the year 1951-52 and requesting with the Commissioner, Exhibit XXIX, on 20th June 1951 to supply tiles as per conditions laid down in Exhibit XXVII; but, even before this agreement was executed, the Commissioner issued a circular letter to the Deputy Commissioners of the Districts, copy of which sent to the Deputy Commissioner, Hassan District being Exhibit XIV, dated 9th May 1951, apprising them of the acceptance of the tender of the Mart, for flat and ridge tiles for the year 1951-52 and requesting them to obtain their requirements in tiles from the Mart. There is nothing to show that samples of tiles were obtained by the Office of the Deputy Commissioner from the Mart and sent to the Executive Engineer for being tested as per directions conveyed by him on Exhibit XIV. Acting on Exhibit XIV, the Deputy Commissioner of Hassan appears to have placed orders with the Mart but, as it had not made the supply, he has issued a circular memo, to all the Amildars on 6th June 1951 that they might place orders for supply of mangalore tiles with the Bharath Company at the rate of Rs. 185 per thousand first class roofing tiles and Rs. 500 per thousand first class ridge tiles if there was urgent necessity. Copy of this memo, Exhibit XIX, was sent to the Bharath Company for information and needful action. It may be mentioned here that the rates quoted for these kinds of tiles by the Bharath Company in its tender for 50-51, Exhibit W, submitted to the Deputy Commissioner of Hassan were the same as found in the original of Exhibit XIX. These are also the rates quoted by the Mart in its tender, Exhibit XXVIII. Original of Exhibit XIX cannot in any way be construed as a standing offer made by the Deputy Commissioner to the Bharath Company, to purchase tiles from it in future, as thereby only permission was granted to all the Amildars in the District to get supplies of tiles from that company on urgent necessity. That was necessitated because, in his opinion, the Mart was delaying supply of tiles as found in it. Subsequent to the date of the original of Exhibit XIX, the Mart had made some supplies of tiles to some Taluks in the Hassan District as per Exhibits XVI (a) and XVI (b) entries in Exhibit XVI, Stock Register maintained in the Deputy Commissioner's Office. These supplies must have met the necessity in urgent cases to some extent.

36. The trouble arose when the Mart failed to make further supplies of tiles to Taluks of the District and the Deputy Commissioner of Hassan made a reference about it to the Commissioner for Rural Development and Depressed Class, Bangalore on 17th July 1951. Exhibit XVIII, dated 11th August 1951, is the Commissioner's reply to that letter. Office copy of the letter addressed by the Deputy Commissioner to the Commissioner on 17th July 1951 might have thrown some light on the dilatoriness on the part of the Mart to supply tiles if it had been produced but it could be gathered from Exhibit XVIII that the Deputy Commissioner must have complained against the laches of the Mart in supplying tiles and hence, under the Exhibit, the Commissioner thought it fit that the Mart must be called upon in the first instance to supply tiles and if it defaulted, purchases might be made from the other local firms at the risk of the approved firm. The Deputy Commissioner must have found as a fact that he had no powers to make any standing offers to any firm for purchase of tiles from it or even to issue original of Exhibit XIX without the permission of the Commissioner, as the Commissioner himself took the entire responsibility for getting supplies of tiles for the benefit of depressed classes throughout the State during the year 51-52 by inviting tenders as per Exhibit XXVII. Hence after the date of original of Exhibit XIX, he has sought instructions as to what he should do on the failure of the Mart to supply the tiles.

37. The Deputy Commissioner addressed the original of Exhibit CCC, letter to the Executive Engineer, Hassan, under date 17th August 1951 that both the Mart and the Bharath Company had come forward to supply tiles, having produced some sample tiles also. Along with it, these tiles were sent to the Executive Engineer, for testing and he found that those produced by the Bharath Company were better than those produced by the Proprietor of the Mart (Vide Exhibit DDD, his reply dated 31st August 1951). On 3rd November 1951, the Deputy Commissioner, sought permission from the Commissioner under the original of Exhibit CC, to purchase tiles from the Bharath Company at the approved rate of Rs. 185 per thousand flat tiles and Rs. 500 per thousand ridge tiles on the ground that the Mart itself was unable to supply tiles and the Deputy Commissioner was referred to Exhibit XVIII by the Commissioner in his reply, Exhibit

XVII dated 26th November 1951, by stating that general permission had already been given in that letter to purchase tiles from local factories on default of the approved firm to supply tiles within the time fixed by him (the Deputy Commissioner), P. W. 6 has mentioned that the approved rate referred to in original of Exhibit CC is the rate approved by the Commissioner. It must be so, as it tallies with the rate given by the Mart in its tender, Exhibit XXVIII.

38. The Commissioner was very particular in using the words 'purchased' and 'to purchase' in Exhibits XVIII and XVII respectively in relation to local firms. Thereby it could be inferred that the Commissioner did not like that any other contract for the supply of tiles by any other firm should come into existence at the instance of the Deputy Commissioner as the Commissioner looked to the Mart for supply of tiles during 51-52 and thought of enforcing the penal clauses in the agreement which it had entered into with him (Vide Exhibit XVIII).

39. Exhibit CCC was drafted by the Office of the Deputy Commissioner under date 10th August 1951 by the time Exhibit XVIII was received in the office on 15th August 1951 but that draft was approved by the Deputy Commissioner only on 17th August 1951 after the receipt of Exhibit XVIII. It is not known why the Deputy Commissioner has stated in the original of Exhibit CCC that the Proprietor of the Mart had come forward to supply tiles as he was bound by the agreement with the Commissioner to do so. There is nothing on record to show that the Bharath Company had come forward to supply tiles of their own accord. It must be at the request of the Deputy Commissioner and it could be so inferred from the fact that, subsequent to the original of Exhibit CCC, on 8th September 1951, the Bharath Company had been "requested" by the Deputy Commissioner to supply tiles to the Amildar of Belur Taluk as per Exhibit AA. The first respondent, R. W. 3 for himself, has deposed that tiles were not sent to the Office of the Deputy Commissioner as samples but the Special Officer for Depressed Classes came and took two or three tiles with their permission but these were not given as samples. There is no covering letter forthcoming for the forwardal of any such tiles to the office of the Deputy Commissioner. Hence the first respondent's evidence must be true and the Mart might have sent some tiles on request from the Deputy Commissioner's office as samples as the Deputy Commissioner wanted these samples to be tested. While doing so they must have got the tiles of the Bharath Company also tested. It does not mean that, as the latter tiles were referred to as samples in the original of Exhibit CCC, the Bharath Company agreed to supply tiles as per samples.

40. The first respondent as R. W. 3 for himself has mentioned, in clear terms that, subsequent to 31st March 1951, the company did supply tiles to Taluks in Hassan District not in pursuance of its tender contract for 50-51 but on account of the purchases made from it by the Taluk authorities like other customers. It is further in his evidence that such purchases were made when the supplies from Sri Rama Tiles and Timber Mart fell short. These versions are amply borne out by documentary evidence, already adverted to.

41. Exhibit III (a) is a certificate obtained by the Bharath Company from the Deputy Commissioner of Hassan on 23rd November 1951 that there is no subsisting agreement between the Company and his Office for that year. It is the year 51-52 and this clearly negates the contention of the learned counsel for the petitioner that there was a subsisting contract between the Bharath Company and the Deputy Commissioner representing the Government of Mysore, for the supply of tiles on the date of the nomination of the first respondent and even thereafter.

42. Supplies of tiles were made to the following Taluks by the Bharath Company subsequent to June 1951:—

Belur.
Saklespur.
Arkalgud, and
Arsikere.

Exhibit JJ is the statement furnished by the Bharath Company to the Amildar, Belur Taluk, showing the supply of tiles made from 13th September 1951 to 23rd October 1951, under date 24th October 1951. A sum of Rs. 3879-2-0 claimed by the company thereunder was reduced by the Amildar to 3852 on 5th December 1951. As per Exhibit MM, statement, a sum of Rs. 1054-9-0 was claimed by the company for supply of tiles to Saklespur Taluk from 27th September 1951 to 12th October 1951. Another statement, Exhibit PP, was made by the company

to the Amildar of the Taluk on 5th November 1951, claiming Rs. 1,372 as the value of tiles supplied to that Taluk from 30th December 1951 to 1st November 1951. On 15th November 1951, the claims in both these exhibits were passed by the Amildar only for Rs. 2,400-5-0 as per Exhibit QQ. So only in the case of Belur Taluk, the bill was passed by the Amildar subsequent to the date of the nomination of the first respondent.

43. Exhibit TT (1) entry in Exhibit TT, Stock Register of the Taluk Office of Arkalgud, shows that certain quantity of tiles were supplied by the company to the Taluk on—26th July 1951 and the price thereof was paid to it on 22nd December 1951 as per Exhibit SS (1) entry in Exhibit SS, the Cash Book maintained in that Taluk Office. It could not be made out from these entries as to when the bill was passed by the Amildar of Arkalgud whether it was before or after the date of the nomination of the first respondent.

44. Then turning to Exhibit UU, the Stock Register maintained by the Taluk Office of Arsikere, Exhibit UU (1) entry, shows that certain quantities of tiles had been supplied by the Company to that Taluk on 10th October 1951 but the payment on the bill for the supply was made on 5th March 1952 as could be made out from Exhibit WW (1) entry in the Cash Register of that Taluk Office, Exhibit WW. Here again there is no indication as to when the bill was passed by the Amildar of Arsikere.

45. Only Exhibit JJ was passed with some reduction by the Amildar of Belur Taluk on 5th December 1951 subsequent to the first respondent's nomination. The rate for the goods sold as per that exhibit had been fixed. Even assuming for the sake of argument that each of the transactions covered by Exhibit JJ resulted in a contract, as the buyer was to do the act of counting the tiles to satisfy himself to ascertain the price at the rate already fixed, property in the tiles did pass to the buyer on delivery. But all the supplies subsequent to June 51 are credit sales only.

46. For the foregoing reasons, my findings on issue 2(a) and alternate second issue are in the affirmative and my finding on issue 2(b) is that supplies of tiles by the Bharath Company to certain Taluks in Hassan District, subsequent to June 51, are by way of credit sales.

47. (a) The statute that lays down disqualification in regard to contractors with the Crown, contesting election to Parliament in the United Kingdom, is thus set out in brief in a leading text-book on English Law of Elections. By 22 Geo 3, C. 45 S. i. applied to the Parliament of the United Kingdom of Great Britain and Ireland by 41 Geo 3, C. 52 S. 1—Ireland. 41 Geo 3. C-52 S. 4—only person, directly or indirectly, etc. undertaking or enjoying in the whole or in part, any contracts etc. made with the Commissioners of the Treasury, Commissioners of the Navy or Victualling Officers, etc., or generally on account of the public service, is disqualified from being elected or sitting.

(b) In the case of *Royse Vs. Birley* (1869) L.R. 4 CP 298, a contractor executed a contract for the supply of goods to the Government before the election. Before the election, he effected delivery of the goods to the Government and those were accepted by it and only the price remained to be paid to him. It has been held that the Act applied to *executory contracts* and not to contracts that had been executed before the election and the member was not disqualified as the contract stood executed before his election. In other words, to incur the disqualification, the contract must be capable of being executed even after the election. There was no such executory contract for the supply of goods, subsisting between the Bharath Company and the appropriate Government, on the date of the first respondent's nomination.

48. The next point that deserves some careful consideration relates to the scope and applicability of Section 82 of the Representation of the People Act, 1951. Under that Section, a petitioner shall join as respondents to his election petition all the candidates who were duly nominated at the election other than himself if he was so nominated. A 'validly nominated' candidate is a candidate who has been duly nominated but has not withdrawn his candidature within the time prescribed for withdrawal under the Act, as defined in Clause (f) of Rule 2 of the Representation of the People (Conduct of Elections and Election Petitions) Rules of 1951. This definition indicates the difference between a duly nominated candidate and a validly nominated candidate, as, to be a validly nominated candidate, he must be not only a duly nominated candidate but also one who has not withdrawn his candidature within the time prescribed. Four persons, namely Sri H. B. Somiah, Sri K. Nanjunde Gowda, Sri B. L. Hutchappa and Sri Dodda Lakkappa whose nomination papers were accepted by P.W. 4 the Returning

Officer, on scrutiny, withdrew their candidature within the time-limit fixed. Hence they were duly nominated candidates but not validly nominated candidates. In *Harford vs. Linskey*, the point arose whether the petitioner was entitled to maintain the election petition against the respondent for a declaration that his election was void, as he (petitioner) stood disqualified for being chosen as a candidate for election at the date of his nomination. In holding that he was entitled to maintain the petition, Wright J observed thus at page 862:—

"Here the petitioner was nominated in fact, his nomination was in form regular, and he was therefore a candidate, and in our opinion qualified to maintain this petition (not of course for the purpose of claiming the seat, but for the purpose of showing that there was no valid election) as any of the persons who voted at the election might have done, whether they had a right to vote or not."

His Lordship has thus referred to the petitioner as one duly nominated in point of form. Hence there could be a duly nominated candidate in form regular, though disqualified. The present case is a stronger one as the four candidates, namely Sri H. B. Somiah, Sri K. Nanjunda Gowda, Sri B. L. Hutchappa and Sri Dodda Lakkappa who have withdrawn their candidature after acceptance of their nominations by the Returning Officer, within the time prescribed for withdrawal, not merely were duly nominated in point of form but also duly nominated candidates at the election on their nominations having been accepted. To quote the words of the same learned Judge, "An election petition is not simply a matter between the parties but is of public concern." It is not a matter *inter partes* but one in the result of which the whole Constituency is interested. If these four candidates had been also impleaded in the election petition, it is quite natural to expect that they would have had their say, if any, against the validity of the election itself, as they, in all probability, must have watched the election contest, having gone to the length of having their nominations accepted. Hence the word 'shall' used in Section 82 of the Representation of the People Act, 1951 must be deemed to connote that the requirement is imperative and thus the Section is mandatory and not directory. Since the four candidates were necessary parties to the election petition, the omission to implead them is fatal to it. This is my finding on the 9th issue. On this ground alone it is liable to be dismissed. At the conclusion of arguments, in this case, the petitioner's counsel preferred Interim Application No. II under the signature of the petitioner, that the said four candidates might be permitted to be impleaded as supplemental respondents in the election petition, if need be, as they might be, at the most, proper and not necessary parties to the petition. They could not now be impleaded as supplemental respondents several months after the statutory time limit fixed for filing the election petition. Hence in my view, Interim application No. II is to be dismissed.

49. Exhibit V is copy of printed electoral roll for the election in respect of Block No. II, Hassan Town Municipality. Exhibit V(a) is an entry against serial No. 130 giving the name of the voter as Lakshmappa, son of Kale Gowda, aged 35, residing at Premises bearing door No. 265. In the course of his objection to the nomination of the first respondent, before P.W. 4, Exhibit H, the petitioner has not taken any objection in this behalf. In the course of his evidence as P.W. 1C, he asserts that this entry does not refer to him. At the time of scrutiny of 1st respondent's nomination paper, the Returning Officer P.W. 4 has come to the conclusion that, due to a printing error, the name 'Lakshmappa' has crept in for 'Lakkappa' as his father's name, Kale Gowda is found in Exhibit V(a) as in his nomination paper. Apart from all these, in the original manuscript electoral roll, Exhibit XXXI, the voter's name has been correctly mentioned as Lakkappa, son of Kale Gowda [vide Exhibit XXXI(a) the relevant entry in it.] Hence the Returning Officer was right in his decision. I find the alternate 8th issue in the affirmative. Sri V. Krishna Murthy does not seriously contend against it.

50. (a) The Karnatak Construction Company, Limited, Davanagere, was registered under the Mysore Companies Act on the 16th day of March 1946. It is a firm, carrying on engineering contracts. The managing Agents of the Company are the firm of Karnatak Engineers, the partners of which are Sri S. Neelakanthappa and Sri K. M. Gangadhariah. The first respondent was one of those co-opted as Directors of the Karnatak Construction Company at its very inception. Exhibit A is the Minute Book of Proceedings of the concern and it shows that he attended only the first meeting, that is, the meeting of the promoters of the company on 31st March 1946 and he did not attend any meeting of the Board of Directors or of shareholders. The following are the dates on which the meetings of the Board of Directors were held:—16th March 1947, 22nd March 1947, 1st August 1948, 23rd October 1949, 2nd April 1951 and 3rd February 1951. At the General Body Meeting held on 20th November 1949, the first respondent and two

others were unanimously re-elected as Directors on their retirement on rotation and the company went into voluntary liquidation on a resolution passed by the Board of Directors on 3rd February 1952, on the strength of the report of the Managing Agents, Exhibit FFF, dated 3rd February 1952, that the financial position of the company was growing from bad to worse ever since it commenced to operate. On the strength of the resolution, the Chairman of the Board of Directors filed Miscellaneous Petition No. 50 of 51-52 in the District Judge's Court, Shimoga against the Managing Agents, under Section 186 of the Indian Companies Act for winding up the company and P.W. 8 Sri P. Murudappa, Advocate at Shimoga, has been appointed by the Court as the Official Liquidator of the company and he has produced certain registers which he seized in the premises of the company. A balance sheet of the company as per Exhibit C for the year ending 15th July 1950, with the name of the first respondent also as one of the Directors printed on the reverse, was sent to him by post on 27th March 1951, as per entry in the company's 'To Register' Exhibit HHH. P.W. 3 Sri S. Neelakantappa, one of the partners of the Managing Agents of the firm, received his letter of resignation from Directorship. He issued to him his reply, Exhibit III(c) dated 19th November 1951, accepting his resignation under Clauses (f) and (j) of Article 97 in Exhibit B, Memorandum and Articles of Association of the company (*vide* his evidence as R.W. 1 for the first respondent). According to P.W. 8, he did not find any such letter of resignation in the file of papers and registers he seized as detailed in Exhibit GG, portion of his report made to the court. Exhibit III(c) does not give the date of the letter of resignation. According to R.W. 1 for the first respondent, he handed over this letter to the first respondent himself personally as per Exhibit HHH(1) entry in Exhibit HHH. In it there is no debit of postage as against this entry. Hence it must have been so delivered to him and he has produced it before P.W. 4 at the scrutiny of his nomination. The agreement between the Managing Agents and the Karnatak Construction Company, defining the powers of the Managing Agents, has not been produced though the witness admits its having come into existence. In its absence, there is no proof that he was entitled to accept the resignation of a Director. This is my finding on the 5th issue.

(b) P.W. 3 makes it appear that he accepted the resignation under Clause (j) of Article 97 of the Articles of Association of the company. That clause only says *inter alia* that the Office of a Director shall be vacated if the Director resigns. It does not, in any way, lay down that the resignation of a Director can be accepted by the Managing Agents. In Exhibit III(c) R.W. 1 for the first respondent also makes pointed reference to Clause (f) of Article 97 of the Articles of Association as another provision under which the resignation has been accepted as already stated. That clause lays down that the Office of a Director shall be vacated on his absenting himself from three consecutive meetings of the Directors or from all the meetings of the Directors for a continuous period of three months, whichever is longer, without leave from the Board of Directors. Here the first respondent has absented himself from all the meetings of the Board of Directors for more than a continuous period of three months. It has not been proved by the petitioner that he has not absented himself voluntarily. There is nothing on record to show that, at any time, he obtained the permission of the Board of Directors to absent himself from any of the meetings. If clause (f) of Article 97 be given effect to as it should be, then the first respondent would have ceased to be Director on account of his absence from all the meetings of Directors which extended till 3rd February 1952 (inclusive) for a continuous period of more than three months, he having been re-elected on 20th November 1949. He ceased to be a Director only on 3rd February 1952 under that clause. I find accordingly on the alternate 4th issue.

51. Exhibit LLL is a ledger maintained by the company Exhibit LLL(1), LLL(2) and LLL(3) dated 16th July 1950, 30th December 1951 and 30th December 1951 show that sums of Rs. 516-10-0, Rs. 2,907-14-0 and Rs. 1,436-8-0 were due to the company by the Government of Mysore on account of Bommanahalli quarry works, construction of Davanagere Railway Station and construction of Kukkuva bridge respectively, but R.W. 1 for the first respondent makes it appear that the amounts due for the construction of the Railway Station, Davanagere, and a bridge at Basavapura had been paid to the company long ago, but he does not remember the date of the final bill in respect of the incomplete construction of Kukkuva bridge sent to Government duly signed by the Managing Agents, prior to 19th November 1951 at any rate, and they must have credited the amount of the bill in their books. But there is the convincing proof in Exhibit LLL(2) and LLL(3) that, even after the nomination of the first respondent, amounts were due to the company by the Government of Mysore on account of construction of the Railway Station and Kukkuva bridge in respect of contracts for the execution of works undertaken by the appropriate authority. My finding on the 4th issue is that the first respondent was a Director of the company and these two contracts were subsisting on the date of his nomination.

52. On the date of his nomination, the first respondent, as a Director of the Company, was not holding an office of profit. Exceptions to Clause (d) of Section 7 of the Representation of the People Act, 1951, are contained in Sub-Clauses (c) and (d) of Clause (1) and Clause (2) of Section 8 of the Act. For purpose of this case, Sub-Clause (d) of Clause (1) of Section 8 is pertinent. Under that Sub-Clause, a person shall not be disqualified to stand as a candidate if he does not hold an office of profit as Director in a public company, by reason of his having a share or interest in any contract between that company and the appropriate authority. The first respondent as a Director not holding an office of profit comes within the saving of the Sub-Clause (d) of Clause (1) of Section 8 of the Act. This is my finding on the sixth issue.

53. It is admitted that the second respondent and Sri Kantharaja Gowda, his son, are members of joint Hindu family. There is convincing evidence on record that Sri Kantharaja Gowda had undertaken to construct a Local Fund Dispensary at Didiga as a charitable endowment in the name of his paternal great-grandfather. In Exhibit YY, a report made by the Amildar of Chennarayapatna to the Deputy Commissioner of Hassan on 4th February 1948, reference is made to a *mutchalika* executed by him before the Deputy Commissioner, Hassan on 26th December 1947 for the fulfilment of his promise to do it (Note: It is mentioned therein that the endowment should stand in the name of his grandfather, the late Sri S. N. Joganna Gowda, evidently his paternal great-grandfather as clearly disclosed in the objection statement of the second respondent). A sum of Rs. 3,000 has also been deposited by Sri Kantharaja Gowda as donation for the construction of the building in the name of the Deputy Commissioner, Hassan on 31st December 1947, that is, five days after the execution of the *mutchalika*. On 27th October 1950, the second respondent presented a petition, Exhibit AAA, to the Deputy Commissioner, Hassan on behalf of his son Sri Kantharaja Gowda, under his son's signature for refund of the donation amount to him for completion of the Hospital building, he having already spent on it a sum of Rs. 12,000. The amount has not been refunded to him yet. Exhibit XXV dated 29th November 1952, is a letter addressed by the Assistant Engineer, Chennarayapatna to Sri Kantharaja Gowda about this building and Exhibit XXVI is a memo dated 23rd February 1952, addressed by the District Medical Officer, Hassan to the second respondent, forwarding copy of his letter under date 22nd February 1952, to the Senior Surgeon in Mysore, Bangalore about this Hospital building. They have come into existence after the date of the nomination of the second respondent and hence cannot be relied on. Exhibit XX, a letter addressed by the District Medical Officer, Hassan to the Deputy Commissioner, Hassan on 24th February 1948, clearly makes mention of the fact that Sri Kantharaja Gowda has come forward to construct a Hospital building at Didiga for Rs. 6,000 at his own cost and enquiring as to whether the donor has deposited any amount in that behalf. From these three Exhibits, Exhibits YY, AAA and XX, it can be clearly made out that the building is being put up by Sri Kantharaja Gowda. There is also the evidence of R.W. 1 for the second respondent, the second respondent himself, that the building was constructed by his son out of their joint family funds and the Government of Mysore had not made any contribution towards the cost of construction in pursuance of any contract between Sri Kantharaja Gowda, undivided son of the second respondent, and the Government of Mysore. The second respondent was not therefore disqualified for being candidate for election to the Assembly under Section 7 (d) of the Act. This is my finding on the alternate 10th issue.

54. As regards the tampering of 39 ballot boxes in which the votes polled by the petitioner had been cast, before the counting, the evidence led by him is conflicting in material particulars and not reliable. As a measure of safe custody, all the ballot boxes relating to the election, were kept in the Police Lock-Up, Chennarayapatna after the election was over till counting. The election was held on 16th January 1952 and the counting took place on 27th January 1952 at the Taluk Office, Chennarayapatna under the supervision of P.W. 4 the Returning Officer.

55. P.W. 10 petitioner makes it appear that he instructed P.W. 1 Hiriyanniah and Mohamed Hussain P.W. 2, to keep watch over the Lock-up and he examined the Lock-up himself on 17th January 1952 at about 4-30 p.m. and found that all the windows in it had been closed and it was locked and the lock had been sealed with the seal of P.W. 4. P.W. 1 was P.W. 10's polling and counting agent for the election. According to him, it was the Sheristadar of the Taluk Office, Chennarayapatna that kept them in the Lock-Up and locked it and sealed it with the seal of the Taluk Office. Though P.W. 10 was not present when the Lock-Up was locked, he purports to have examined the seal on the lock on 17th January 1952. The version of P.Ws. 1 and 10 as to the seal differs. According to P.W. 2, it was he that

used to go thrice or four times daily since the Lock-Up was locked to see whether the seals on the lock on it were intact. On the 18th January 1952, he was not in Chennarayapatna. He purports that for the first time on 20th January 1952, when he went to the Taluk Office wherein the Lock-Up is situate, at 10 or 10-30 A.M. just to see the lock, he was obstructed by a constable outside the building and hence he came to P.W. 1's house and took him to the Taluk Office and both of them went inside it in spite of the obstruction offered by the constable as before and found that the doors of the Lock-Up were open and the Sheristedar of the Taluk Office was inside it, piling up the ballot boxes and the brothers of the first respondent, Kapini Gowda and Mari Gowda, were standing outside the Lock-Up. In all these particulars, he is no doubt corroborated by P.W. 1 but P.W. 1 has specifically mentioned that the Sheristedar was piling up the boxes in which the votes of the petitioner had been cast. It is at the instance of P.W. 1, P.W. 2 alleges to have gone to Nuggenahalli and informed the petitioner about this incident that very day. The petitioner himself asserts that, soon after he heard the news, he came to Chennarayapatna and questioned the Sheristedar about all these but he told him that the Lock-Up was opened to close the windows in it and the brothers of the first respondent had come to obtain a permit for transport of paddy. Thereafter petitioner refers to the alleged tampering of the seals on his ballot boxes as noticed by him at the time of counting and in that connection, he preferred the original of Exhibit L dated 27th January 1952, a petition, to the Returning Officer P.W. 4 who attended to the counting and on 29th January 1952, he had sent the original of Exhibit MMM, another petition, to the Election Commission. In both of them, reference has been made to the said opening of the Lock-Up. There is also an additional allegation in the latter petition that it was opened on 18th or 19th January 1952. In both of them, there is no mention at all that the Sheristedar of the Taluk Office opened it on 20th January 1952 and he was piling up the ballot boxes. This shows that the petitioner is improving his version from time to time while on an important point. The petitioner cited P. W. 9 Shek Mohamed Salar as an additional witness so late as 19th December 1952 and his evidence is to the effect that, when he was sleeping in the house of his Yeyman, a dealer in provisions just behind the Lock-Up, a lorry loaded with things was brought by his Yeyman from Bangalore at about 1 A.M. and he woke up and found some light burning in the Lock-Up and he took a fuel piece and placed it over its wall and climbed over it and through the aperture in the shutters of one of the windows, he found the Sheristedar inside and he was removing the ballot papers from ballot boxes with the mark of a hut and putting them into the ballot box bearing the mark of a bullock and he informed his Yeyman accordingly. The witness does not give the date or even the month of this alleged incident. According to him, the window was about 7 or 8 feet above the ground level. It is next to impossible for any one to reach the window over the fuel piece, said to be two cubits long. If really he found the Sheristedar meddling with the ballot papers and he informed his master about it, then the latter would have at once come to the Taluk Office and found fault with the Sheristedar. But he makes it appear that he (his master) went to bed soon after he was apprised of the event. At a later stage, the witness has also prevaricated by saying that he informed his Yeyman that some one was inside with two boxes before him. If P. W. 10 (Petitioner) had heard from the master of P. W. 9 on 17th December 1952 that P. W. 9 found the Sheristedar inside the Lock-Up, meddling with the ballot boxes, as stated by him, then he would have certainly cited him as an additional witness.

56. At the counting, P. Ws. 1 and 10 were present. P. W. 10 has deposed in brief that, before his ballot boxes were opened, he examined the seals on the boxes and on some of them, his seals that had been placed by his agents evidently at the polling booths, were not intact. In the original of Exhibit L, P. W. 10 has specified the tampering in question thus:—

1. Seals and signatures of his agents put on his ballot boxes had been meddled with.
2. On several boxes his agents' signatures on slips and seals put by them were missing
3. That the signatures of Presiding Officers in many booths also appear to have been tampered.

57. If all these allegations were true, he would have mentioned them in the course of his oral testimony in detail. P. W. 4 has reported in the original of Exhibit M on the original of Exhibit L that all facilities were afforded to the petitioner to examine his ballot boxes before they were opened, and there was nothing unusual about them. That report discloses that there were four Checking Officers at the counting. They were all Gazetted Officers. If there were any

tampering with the signatures and seals on any of the petitioner's ballot boxes, they would have certainly suggested to P. W. 4 not to have them opened for counting.

58. From the original of Exhibit M, it can be also made out that the Amildar of Chennarayapatna, the Assistant Returning Officer was entrusted by P. W. 4 with the safe custody of the ballot boxes and the Amildar was obliged to open the Lock-Up after the ballot boxes were kept in it to close the fretwork ventilators with wooden planks to avoid all mischief. So it is not the Sheristadar that opened the Lock-Up but the Amildar.

59. In the election petition, the averment is that 39 ballot boxes of the petitioner had been tampered with as against 11 ballot boxes or so, spoken to by P.W. 1.

60. For the foregoing reasons, I hold that none of the petitioner's ballot boxes had been meddled with. Hence my finding on the 11th issue is in the negative.

61. The first respondent's contention that the election petition is liable to be dismissed for non-payment of court fee thereon under Article 22 of Schedule II of Court Fees Act, is not pressed by his counsel. The provision of law too is not correct. Hence my finding on the 13th issue is in the negative.

62. In the view I have taken of this case, the 12th issue does not call for a finding, and the acceptance of nominations of Respondents 1 and 2 is legal.

63. Under the general issue, in my view, the election petition fails and it is to be dismissed with costs of Respondents 1 and 2. First Respondent's Advocate's fee Rs. 100 and Second Respondent's Advocate's fee Rs. 75.

Dictated to the Stenographer and pronounced in open Court on the 24th day of February 1953.

(Sd.) V. KANDASWAMI PILLAI, *Chairman.*

ORDER OF THE TRIBUNAL UNDER SECTION 104 OF THE REPRESENTATION OF THE PEOPLE ACT, 1951.

In pursuance of the majority decision by the two members of the Tribunal, it is held that the acceptance of the nomination of the 1st Respondent is illegal and has materially affected the result of the election, and the election is declared to be wholly void. In the result, the Election Petition is allowed, parties to bear their own costs.

Pronounced in open court, this 24th day of February 1953.

1 (Sd.) V. KANDASWAMI PILLAI, *Chairman.*

2. (Sd.) H. HOMBE GOWDA, *Member.*

3. (Sd.) MIR IQBAL HUSSAIN, *Member.*

[No. 19/67/52-Elec.III.]

P. S. SUBRAMANIAN,
Officer on Special Duty.